

United States
Circuit Court of Appeals
For the Ninth Circuit.

JACK LESAMIS, JOHN TYAPAY, ANDY
GARBIN, GEORGE STANLEY and SAM
SALLO,

Appellants,

VS.

H. GREENBERG,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for
the District of Alaska, Second Division.

Filed

DEC 16 1914

F. D. Monckton,

United States
Circuit Court of Appeals
For the Ninth Circuit.

JACK LESAMIS, JOHN TYAPAY, ANDY
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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

	Page
Affidavit of G. J. Lomen.....	108
Answer and Cross-complaint, Supplemental...	40
Answer of Jack Lesamis, John Tyapay and Andy Garbin, Separate.....	21
Answer of George Stanley and Sam Sallo, Sep- arate	15
Answer to Supplemental Answer and Cross- complaint, etc., Reply and.....	45
Assignment of Errors.....	244
Attorneys of Record, Names and Addresses of.	1
Bond on Appeal.....	254
Certificate of Clerk U. S. District Court as to Execution, etc.	258
Certificate of Clerk U. S. District Court to Tran- script of Record.....	261
Citation	264
Complaint in Equity.....	3
Complaint, Supplemental Answer and Cross...	40
Conclusions of Law.....	66
Consent to Approval of Statement of Evidence.	242
Cross-complaint, Supplemental Answer and....	40

Index.	Page
Decree	81
Defendants' Exceptions to the Findings of Fact and Conclusions of Law.....	67
Defendants' Objections and Exceptions to Judgment	86
Deposition of Andy Garbin (Part of).....	176
Deposition of Sam Sallo (Portion of).....	206
Exceptions, Bill of.....	124
Exceptions to Findings and Conclusions, Defendants'	67
Exceptions to Judgment, Defendants' Objections and	86
Execution, Writ of.....	87
Exhibit—Receipt for Gold-dust.....	176

EXHIBITS:

Plaintiff's Exhibit "A"—Agreement, March 19, 1910, Between Tyapay et al. and Greenberg	126
Plaintiff's Exhibit "B"—Agreement, March 19, 1910, Between Garbin et al. and Greenberg	128
Plaintiff's Exhibit "C"—Agreement, Sep- tember 1, 1911, Between Grenberg et al. and Boskovitch et al.....	136
Plaintiff's Exhibit "D"—Deed, June 17, 1911, Tyapay et al. to Greenberg.....	141
Plaintiff's Exhibit "E"—General Power of Attorney—Tyapay to Greenberg.....	146
Plaintiff's Exhibit "F"—Telegram, July 7, 1911, Garbin to Greenberg et al.....	149

Index.

Page

EXHIBITS—Continued:

Plaintiff's Exhibit "G"—Letter, October 20, 1910, Tyapay and Lesamis to Greenberg	150
Plaintiff's Exhibit "H"—Letter, February 20, 1912, Tyapay to Greenberg.....	152
Plaintiff's Exhibit "I"—Letter, Dated June 14, 1911, ————— to John Lichtenberg	174
Plaintiff's Exhibit "J"—Check.....	181
Plaintiff's Exhibit "K"—Check.....	182
Plaintiff's Exhibit "L"—Statement.....	183
Plaintiff's Exhibit "M"—Statement.....	200
Plaintiff's Exhibit "V"—Agreement, December 27, 1911, Between Stanley and Garbin	216
Defendants' Exhibit No. 5 for Identification—Letter, December 17, 1912, Greenberg and Tyapay to Lesamis....	229
Findings of Fact and Conclusions of Law.....	55
Motion for Confirmation of Sale.....	118
Motion for Order Quashing Execution.....	107
Names and Addresses of Attorneys of Record..	1
Notice of Motion for Approval of Statement of Evidence, Waiver of Notice and Consent to Approval	242
Objections and Exceptions to Judgment, Defendants'	86
Objections of Defendant to Confirmation of Sale	120
Opinion	50
Opinion	105

Index.	Page
Opinion on Motion to Quash Execution, etc....	113
Order	256
Order Allowing Appeal.....	257
Order Allowing Defendant Thirty Days to File Bill of Exceptions.....	102
Order Approving Statement of Evidence.....	243
Order Confirming Marshal's Sale.....	122
Order Denying Motion for a New Trial.....	102
Order Denying Motion for Continuance of Hear- ing of Motion for New Trial.....	102
Order Enlarging Time to File Record.....	263
Order Overruling and Denying Motion for an Order Vacating Certain Orders Made No- vember 1, 1913.....	103
Order Overruling Motion for Extension of Time to File Bill of Exceptions, etc.....	102
Order Relative to Motion for Extension of Time to File Bill of Exceptions, etc.....	101
Order Settling and Allowing Bill of Exceptions	241
Petition for an Order Allowing Appeal.....	252
Praecipe for Transcript of the Record.....	259
Proposed Bill of Exceptions.....	124
Reply and Answer to Supplemental Answer and Cross-complaint of Defendants George Stanley and Sam Sallo.....	45
Reply to Separate Answer of Jack Lesamis, John Tyapay and Andy Garbin.....	31
Reply to Separate Answer of George Stanley and Sam Sallo.....	37
Separate Answer of Jack Lesamis, John Tyapay and Andy Garbin.....	21

Index.

Page

Separate Answer of George Stanley and Sam Sallo	15
Summons	1
Supplemental Answer and Cross-complaint....	40

TESTIMONY ON BEHALF OF PLAINTIFF:

ECKHART, HUGO	144
Cross-examination	145
GREENBERG, H.	124
Recalled	146
Cross-examination	154
Redirect Examination	171
Recross-examination	173
Redirect Examination	174
Recalled	175
Recalled	196
Cross-examination	197
Recalled in Rebuttal.....	234
HOBBS, J. F. (in Rebuttal).....	237
Cross-examination	237
Redirect Examination	239
Recross-examination	240
LEVY, W. L.....	197
Recalled in Rebuttal.....	234
Cross-examination	235
MAGIDS, SAM	177
Cross-examination	189
Redirect Examination	196
In Rebuttal	234
MORAN, MARTIN	174

Index.	Page
TESTIMONY ON BEHALF OF PLAIN-	
TUFF—Continued:	
MURPHY, PHILIP (in Rebuttal)	235
Cross-examination	236
STANLEY, GEORGE	177
Cross-examination	177
TESTIMONY ON BEHALF OF DEFEND-	
ANTS:	
GARBIN, ANDY	207
Cross-examination	213
Redirect Examination	221
Recalled	230
Cross-examination	230
Redirect Examination	230
LESAMIS, JACK	221
Cross-examination	226
Redirect Examination	228
Recross-examination	228
Recalled	229
Recalled	231
MORAN, M. F.	219
Cross-examination	220
Redirect Examination	221
STANLEY, GEORGE	230
Recalled	232
Cross-examination	232
Redirect Examination	233
Undertaking on Appeal	254
Writ of Execution.....	87

Names and Addresses of Attorneys of Record.

J. F. HOBBS, Nome, Alaska,
WILLIAM A. GILMORE, Nome, Alaska,
Attorneys for Plaintiff.

G. J. LOMEN, Nome, Alaska,
O. D. COCHRAN, Nome, Alaska,
Attorneys for Defendants.

*In the District Court for the District of Alaska,
Second Division.*

No. 2349.

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS, JOHN TYAPAY, ANDY GAR-
BIN, GEORGE STANLEY and SAM SALO,
Defendants.

Summons.

The President of the United States of America, to
Jack Lesamis, John Tyapay, Andy Garbin,
George Stanley and Sam Salo, Defendants,
Greeting:

You are hereby summoned and required to appear and answer the complaint of the plaintiff on file in the office of the above-entitled court, at the city of Nome, Alaska, within thirty (30) days from the service of this summons upon you, or judgment for want thereof will be taken against you;

And you are hereby notified that if you fail to answer the said complaint, the plaintiff will apply

to the Court for the relief demanded in said complaint.

WITNESS the Honorable CORNELIUS D. MURANE, Judge of said Court, and the seal of said Court hereto affixed this 1st day of November, in the year of our Lord one thousand nine hundred and eleven, and of the Independence of the United States, one hundred and thirty-sixth.

(Court Seal) J. SUNDBACK,
Clerk of the District Court, District of Alaska, Second Division.

By J. Allison Bruner,
Deputy. [1*]

United States of America,
District of Alaska,
Second Division,—ss.

I hereby certify that I received the annexed summons on the 18th day of November, 1911, and thereafter on the 20th day of November, 1911, I served the same at Kiana, Alaska, upon Jack Lesamis, Andy Garbin, George Stanley and Sam Salo, by delivering to and leaving with each of them a copy thereof, together with a certified copy of the complaint filed therein. After due and diligent search I was unable to find John Tyapay.

Returned this 24th day of November, 1911.

T. C. POWELL,
United States Marshal.
By C. H. Hawkins,
Deputy.

Marshal's Costs: 4 Services—\$24.00.

*Page-number appearing at foot of page of original certified Record.

[Endorsed]: No. 2349. In the District Court for the District of Alaska, Second Division. H. Greenberg, Plaintiff, vs. Jack Lesamis et al., Defendants. Summons. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome, Dec. 13, 1911. John Sundback, Clerk. By J. Allison Bruner, Deputy. J. H. Hobbes and William A. Gilmore, Attorneys at Law, Nome, Alaska, Attorneys for Plaintiff. 3348. [2]

*In the District Court for the District of Alaska,
Second Division.*

No. —.

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS, JOHN TYAPAY, ANDY GAR-
BIN, GEORGE STANLEY and SAM SALO,
Defendants.

Complaint in Equity.

Comes now plaintiff and for cause of action against the defendants above named alleges as follows:

I.

That heretofore and on the 19th day of March, 1910, and for a long time prior thereto, the defendants, Jack Lesamis, John Tyapay and Andy Garbin, were the owners and in the possession of certain placer mining claims situated in the Noatak-Kobuk Mining and Recording District, District of Alaska, and that the legal titles to the said placer mining claims stood in the names of the said defendants by

virtue of certain placer locations by them theretofore made in said mining district; that on the said 19th day of March, 1910, the said defendants, Jack Lesamis, John Tyapay and Andy Garbin entered into certain written instruments whereby and wherein they agreed with the plaintiff to form a copartnership to work and mine the said mining claims and to give and convey to the plaintiff an undivided one-quarter ($\frac{1}{4}$) interest in all of said placer [3] claims, lode claims and water rights then owned, acquired or to be acquired by the said defendants, in consideration that the plaintiff furnish them with provisions from time to time from the said 19th day of March, 1910, up to and until July, 1910, and agreed to pay said defendants the sum of six thousand dollars (\$6,000.00) in cash, and thereafter the further and additional sum of twenty-four thousand dollars (\$24,000.00) from the net profits of the mining operations to be thereafter conducted and had upon said mining claims; that the said agreement between the parties, plaintiff and said defendants, was reduced to writing and incorporated in the following two written instruments, which said instruments were executed, witnessed and delivered between the parties, to wit:

“AGREEMENT.

Klery Creek March 19th 1910.

Know all men by these presents, That we the undersigned John Tyapay Andy Garbin and Jack Lesamis of the Noatak-Kobuk recording district District of Alaska, and H. Greenberg of Nome Ala. enter into this agreement, that for the sum of one dollar lawful

money of the United States in hand paid and other valuable services, for same services H. Greenberg is, and shall be a full fledged partner with the above-mentioned parties & have one quarter undivided interest in all claims, lodes, water rights acquired or to be acquired and owned by the above-mentioned parties. It is further agreed that H. Greenberg is to furnish the above-mentioned parties with provisions from time to time up to till July 1910.

ANDY GARBIN. (Seal)

JACK LESAMIS. (Seal)

JOHN TYAPAY. (Seal)

H. GREENBERG.

Witnesseth:

SAM MAGIDS.

HERMAN BERNHARDT.” [4]

“This indenture made the 19th day of March in the year of our Lord one Thousand nine hundred and ten between the undersigned Andy Garbin, Jack Lesamis and John Tyapay of the Noatak-Kobuk Recording District, of the District of Alaska parties of the first part and H. Greenberg of Nome Alaska party of the second part witness, That the said parties of the first part, for and in consideration of the sum of Thirty Thousand *do* dollars (\$30000.00).

Six Thousand dollars (\$6000.00) in lawful money of the United States of America to them in hand paid by said party of the second part, The receipt whereof is hereby acknowledged, and the balance of Twenty four thousand to be paid of the first money taken out of the ground hath, granted, bargained, sold, remised, released and forever quit-claimed, and by

these presents doth grant, bargain, sell, remise, release and forever quit-claim unto the said party of the second part, his heirs and assigns one quarter ($\frac{1}{4}$) undivided of all mining claims located, surveyed, recorded and held by said parties of the first part situated in Noatak-Kobuk mining district district of Alaska, together with all the dips, spurs and angles and also the metals, ores, gold and silver bearing quartz, rock and earth therein, and all the rights, privileges, and franchises thereto incident, appendent and appurtenant, or therewith usually had or enjoyed; and also all and singular the tenements, hereditaments and appurtenances, thereunto belonging, or in any wise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well as in law as in equity, of the said party of the first part of, in or to the said premises and every part or parcel thereof, [5] with appurtenances.

To have and to hold, all and singular, the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part his heirs and assigns forever warranting and defending the same against the claims of all persons, save and except the United States.

ANDY GARBIN. (Seal)

JACK LESAMIS. (Seal)

JOHN TYAPAY. (Seal)

Witnesseth:

SAM MAGIDS.

HERMAN BERNHARDT."

II.

That thereafter and at all times since said 19th day of March, 1910, plaintiff has fulfilled and carried out the terms, covenants and conditions on his part to be done, made, kept and performed, and did furnish the said defendants with the provisions mentioned in said written instrument, and did pay to said defendants the said sum of six thousand dollars (\$6,000.00) in lawful money of the United States, and the said defendants thereupon and in pursuance of the terms of said written instrument, entered into the mining copartnership known, named and called the KLERY CREEK MINING COMPANY, and thereupon began mining operations upon the said placer claims hereinafter named and set forth.

III.

That at the time said instruments were executed and delivered, the said defendants, Jack Lesamis, John Tyapay and Andy Garbin, were the owners and in the possession of the following placer mining claims: [6]

Discovery Claim; One Above Discovery, Two Above Discovery, Six Below Discovery, Fraction Between Two and Three Above Discovery, Association Fraction Between Discovery and Starr, California Association, L. L. Klery Creek, Opposite Discovery, Butte Association, R. L. Klery Creek opposite Discovery, Oregon Association (Bench and Creek) adjoining upper and Starr, and lower end of 1 and 2 Above Discovery, Bench Seven, opposite Creek Claim Seven Below, Gold Hill Association R. L. opposite 1, 2, 3 and 4 creek claims, all the fore-

going claims being situated on Klery Creek, *it* its benches. Also Honey Claims, one and two, between Klery and Bear Creeks, Northpole Association L. L. adjoining claims, last above described, One and two Above Discovery, on Bear Creek, Goldfield Association opposite 1 and 2 above and 1 below L. L. Bear Creek, Rich Association on Bear Creek, and adjoining 2 above, Central Association, adjoining No. 1 below, on Central Creek, Discovery on Central Creek, One above on Central Creek, One Below on Central Creek, Fraction (Garbin) on Central Creek, Discovery Claim on Jack Creek, a tributary of Klery; all interest of said first party in all mining claims owned in whole or part in Rocky Creek, in said mining and recording district. And thereupon the said KLERY CREEK MINING COMPANY entered into possession of said claims and began to mine and operate the same as a mining copartnership; that thereafter the said KLERY CREEK MINING COMPANY operated the said placer mining claims on the said Klery Creek and vicinity in the Noatak-Kobuk Recording District, between said 19th day of March, 1910, and the 10th day of August, 1911; that during said term and time said mining claims were operated at a loss to the said mining copartnership at approximately the sum of eighteen [7] thousand dollars (\$18,000.00); that said indebtedness is due to the firm of Robinson, Magids & Co., or assignee, for goods, wares and merchandise and for money advanced at the request of said KLERY CREEK MINING COMPANY.

IV.

That on or about the 10th day of August, 1911,

the said KLERY CREEK MINING COMPANY executed several written leases upon several of the said mining claims above mentioned belonging to the said KLERY CREEK MINING COMPANY for the purpose of having said copartnership property mined during the present winter, under all of which said leases certain stipulated royalties were reserved to be paid to said mining copartnership.

V.

That heretofore and on or about the 13th day of August, 1911, the defendants, Andy Garbin and Jack Lesamis, in violation of the terms and conditions of the said copartnership instruments, entered into a conspiracy to defraud this plaintiff of his rights in the said KLERY CREEK MINING COMPANY, and thereupon collusively and fraudulently and without any consideration, transferred and assigned all of their right, title and interest in the said KLERY CREEK MINING COMPANY, copartnership property, consisting of said placer mining claims on Klery Creek and vicinity in said Noatak-Kobuk Recording District, to said defendants, George Stanley and Sam Salo, both of whom were and are insolvent.

VI.

That the said written instruments executed and delivered as above alleged on the 19th day of March, 1910, were [8] thereafter duly recorded in the office of the recorder of the said Noatak-Kobuk Recording District, District of Alaska, on the 29th day of March, 1910, and the said defendants, George Stanley and Sam Salo, took and received the said transfers of title from the said defendants, Jack

Lesamis, and Andy Garbin, with full knowledge and notice of the said written instruments of the said copartnership and with full knowledge and notice of the fact that the said KLERY CREEK MINING COMPANY had outstanding indebtedness at said time of approximately the sum of eighteen thousand dollars (\$18,000.00.) incurred in mining operations, over and above all production of gold from said mining claims so conveyed.

VII.

That the said transfer from the said defendants Lesamis and Garbin to the said Stanley and Salo were made for the purpose and with the intent of changing and modifying the said original copartnership agreement, and immediately thereafter the said defendants, Stanley and Salo, threatened to and did claim, and do now claim, that they, by reason of the said assignment were and are now entitled to the sum of twenty-four thousand dollars (\$24,000.00) from the first gross output of said mining claims, and now claim and assert that they are entitled to said sum of twenty-four thousand dollars (\$24,000.00) before the said indebtedness of eighteen thousand dollars (\$18,000.00) is paid or the expenses of operating the said mining claims is paid and defrayed.

VIII.

That the said defendants, Stanley and Salo, are now [9] claiming to be the lessors of the lessees who are working the said mining claims and threaten to and will collect or attempt to collect the royalties and the entire output of the said placer mining

claims belonging to the said KLERY CREEK MINING COMPANY, under their alleged claim for payment of twenty-four thousand dollars (\$24,000.00) alleged to be due them in disregard of the present indebtedness of said KLERY CREEK MINING COMPANY, and contrary to the intent of the formation of said KLERY CREEK MINING COMPANY, as above alleged.

IX.

That heretofore and on the 24th day of October, 1911, one Philip Murphy, claiming an assignment of the account of said Robinson, Magids & Co., creditor of said KLERY CREEK MINING COMPANY, began an action at law in the above-entitled court for the collection of the sum of seventeen thousand one hundred twenty-four dollars (\$17,124.00) and interest against the said KLERY CREEK MINING COMPANY, consisting of the defendants, Jack Lesamis, John Tyapay and Andy Garbin, and this plaintiff, and caused to be issued a writ of attachment against the mining property of said KLERY CREEK MINING COMPANY; that said amount is justly due the said Robinson, Magids & Co. or their assignee, the said Philip Murphy, and should be paid from the first gold or gold-dust taken or extracted, mined or received from the said placer mining claims, before the said sum of twenty-four thousand dollars (\$24,000.00) or any other amount is payable to the said defendants, Jack Lesamis or Andy Garbin.

X.

That owing to the acts and actions of the said defendants, Jack Lesamis and Andy Garbin, as above

alleged, it [10] is impossible for the plaintiff and said defendants to further act and conduct the mining copartnership in the management and working of said mining copartnership property and mining claims; that said defendants, George Stanley, Sam Salo, Andy Garbin, Jack Lesamis and John Tyapay, are all insolvent and have no other property of value other than their alleged interest in the said copartnership mining property, and unless the Court appoint a receiver of this court to take possession of the said mining copartnership property and mining claims and collect the royalties, rents and profits thereof, the same will be wholly dissipated by the said defendants, and the plaintiff will be compelled by law to pay the indebtedness of said mining copartnership from his personal assets; that the said defendants, Jack Lesamis, Andy Garbin and Jack Tyapay refused to account to the plaintiff and have refused and still refuse to enter into an accounting between the plaintiff and the said defendants, with reference to the expenses and output of the said copartnership under the terms and conditions of said copartnership agreement, and said defendants, Stanley and Salo, threaten to assume the management and control of the copartnership assets of said KLERY CREEK MINING COMPANY, and threaten to appropriate the rents, royalties and profits to their own use and benefit, and threaten to and do ignore the debts and liabilities of said KLERY CREEK MINING COMPANY, to the damage and injury of the plaintiff.

WHEREFORE, plaintiff prays the Court as follows:

1. For a restraining order against the defendants and each of them enjoining and restraining them and each of them *pendente lite* from in any manner transferring, assigning, encumbering or conveying in any manner or way, whatsoever, any [11] interest in the said mining claims above alleged, the property of the said KLERY CREEK MINING COMPANY.

2. That the Court appoint a receiver of this Court to take possession of said mining claims and hold the possession, subject, however, to the leases heretofore given for the purpose of accepting and receiving, subject to the orders of the Court, all rents, royalties and profits from the operation of the mining claims of the said KLERY CREEK MINING COMPANY.

3. That the Court make an accounting between the plaintiff and defendants of all and every matter arising under and by virtue of the said mining copartnership, and that the Court order and direct the said receiver to pay and defray from the rents, royalties and profits collected by him, any and all indebtedness now existing against the said KLERY CREEK MINING COMPANY, including the amount due to the said Robinson, Magids & Co., or their said assignee, Philip Murphy.

4. That the Court enter a final decree dissolving the said copartnership and directing a sale of all of said property, both real and personal, and directing a distribution of the proceeds among the mem-

bers of the said copartnership if any proceeds exist after the satisfaction of all indebtedness found to be due.

5. That the plaintiff be decreed and adjudged entitled to his costs and disbursements in this action against the said defendants.

6. And that the plaintiff be entitled to such other and further relief as to the Court seems meet and proper.

J. F. HOBBS and
WILLIAM A. GILMORE,
Attorneys for Plaintiff. [12]

United States of America,
District of Alaska,—ss.

H. Greenberg, being first duly sworn, deposes and says:

That he is the plaintiff in the above and foregoing action; that he has heard read the above and foregoing complaint, knows the contents thereof and the same is true as he verily believes.

H. GREENBERG.

Subscribed and sworn to before me this 30th day of October, A. D. 1911.

[Notarial Seal]

WILLIAM A. GILMORE,
Notary Public in and for the District of Alaska.

[Endorsed]: No. 2349. In the District Court for the District of Alaska, Second Division. H. Greenberg, Plaintiff, vs. Jack Lesamis et al., Defendants. Complaint. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome.

Nov. 1, 1911. John Sundback, Clerk. By _____
Deputy. L. J. H. Hobbes, and William A. Gil-
more, Attorneys at Law, Nome, Alaska, Attorneys
for Plaintiff. [13]

*In the District Court for the District of Alaska,
Second Division.*

No. —.

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS, JOHN TYAPAY, ANDY GAR-
BIN, GEORGE STANLEY and SAM
SALLO,

Defendants.

Separate Answer of George Stanley and Sam Sallo.

Come now the defendants George Stanley and Sam Sallo, and for their separate answer to the complaint of the plaintiff, H. Greenberg, herein, admit, deny and allege as follows:

I.

These answering defendants deny each and every allegation, matter and thing in said complaint alleged, except as hereinafter admitted, qualified or otherwise alleged.

II.

These answering defendants admit that on the 19th day of March, 1910, their codefendants herein, Jack Lesamis, John Tyapay and Andy Garbin, were the owners of the premises mentioned and described in the said complaint, and that on the day last afore-

said, their said codefendants entered into the agreement and made the conveyance in words and figures set forth in said complaint and upon the considerations expressed in said instruments. [14]

III.

That on or about the 2d day of Sept. 1911, the defendant Andy Garbin for a valuable consideration, granted, bargained, sold and conveyed and assigned to the defendant George Stanley, all his right, title and interest in and to the said premises described in said complaint, and in and to all gold-dust extracted therefrom, and in and to all claims and demands against the plaintiff Greenberg, arising from the operation and mining of said premises, and in and to all deferred payments due from said Greenberg on account of his purchase of the undivided one-fourth of said premises under the conveyance mentioned in the complaint, and in and to all sums or royalties due or to become due under leases executed by said Garbin and cotenants of said premises.

IV.

That on the day last aforesaid, the defendant Jack Lesamis, for a valuable consideration, granted, bargained, sold and conveyed and assigned to the defendant Sam Sallo, all his right, title and interest in and to the said premises described in said complaint, and in and to all gold-dust extracted therefrom, and in and to all claims and demands against the plaintiff Greenberg, arising from the operation and mining of said premises, and in and to all deferred payments due from said Greenberg on account of his purchase of the undivided one-fourth of said

premises under the conveyance mentioned in the complaint, and in and to all sums or royalties due or to become due under leases executed by said Lesamis and cotenants of said premises.

V.

That under the said agreement, the said plaintiff [15] and the defendants Tyapay, Garbin and Lesamis, as copartners under the firm name of KLERY CREEK MINING COMPANY, mined and operated No. 1 Above the Star Association claim mentioned in the complaint; that the plaintiff, as copartner aforesaid, received the total receipts of said business, being gold-dust extracted from said claim, amounting in all to the sum of \$16,343.43, and paid all the expenses of said business amounting in all to the sum of \$7,788.62, leaving a balance due from said Greenberg to each of the defendants Garbin and Lesamis of the sum of \$2,138.70.

That by virtue of said conveyance and agreement mentioned in the complaint, the said plaintiff became and was indebted to each of the defendants Garbin and Lesamis, in a sum equal to one-third of one-fourth of the said gold-dust extracted, to wit, the sum of \$1,361.70, to apply on the purchase money agreed to be paid by said plaintiff under the said conveyance to him.

VI.

That on or about the 9th day of September, 1910, the said copartnership was terminated and the books of said partnership closed.

VII.

That said plaintiff has not paid to the said Garbin

and Lesamis the said amounts so due as aforesaid, except the sum of \$1,333.00 thereof, paid to said Garbin, and except the sum of \$1,000.00 thereof paid to said Jack Lesamis.

VIII.

That thereafter, and during the year 1911, the said plaintiff, on his own account and as tenant in common of said premises, operated and mined the said No. 1 Above the Star [16] Association Claim, and extracted from said claim gold-dust of the amount and value of \$8,713.38; that under and by virtue of said agreement and conveyance mentioned in the complaint the said plaintiff became indebted to the said Garbin and Lesamis, and to each of them, in the sum of \$726.12, the same being their share of the one-fourth of the gold-dust extracted from said claim, to be applied on said purchase price to be paid by said plaintiff as hereinbefore mentioned.

IX.

That said several amounts so due from said plaintiff to said Garbin and Lesamis were the amounts assigned to these answering defendants, as hereinbefore stated, and said amounts are now due and owing to these answering defendants, to wit, in the aggregate to said George Stanley the sum of \$2,893.78, with interest on the sum of \$2,167.66 thereof from September 9th, 1910, at the rate of eight per cent per annum, and with interest on \$726.12 thereof from August 10, 1911, at the rate of eight per cent per annum, and in the aggregate to Sam Sallo, the sum of \$3,226.77, with interest on \$2,500.65 thereof from September 9th, 1910, at the

rate of eight per cent per annum, and with interest on \$726.12 thereof from the 10th day of August, 1911, at the rate of eight per cent per annum.

X.

That the plaintiff and the Robertson, Magids Company, Robertson-Magids and Company, and Phillip Murphey had notice and knowledge at all times of the matters and things herein alleged; and with such knowledge participated in and entered into the transactions mentioned in the complaint; conniving [17] and conspiring with the plaintiff with the fraudulent intent and design thereby to deprive and defraud these answering defendants and their predecessors in interest of their said properties.

WHEREFORE these answering defendants pray that judgment may be entered in their favor and against the plaintiff for the respective sums due them and each of them, as aforesaid, with interest; that if any accounting be necessary for such purpose, that an accounting be had of all the matters and things in issue between said parties, and that upon such accounting being had, judgment be entered in favor of each of said parties for such sums or sum as such parties shall be entitled to, and against the other of said parties, according to the amounts due from each, and for costs to be taxed to the prevailing parties herein, and for such other and further relief as to the Court shall seem just.

O. D. COCHRAN,

G. J. LOMEN,

Attorneys for Defendants. [18]

District of Alaska,
Nome Precinct,—ss.

George Stanley, being first duly sworn, deposes and says: That he is one of the defendants named in the foregoing answer, that he has read the same, knows the contents thereof, and that the same is true as he verily believes.

GEO. L. STANLEY.

Subscribed and sworn to before me this the 19th day of December, 1911.

[Notarial Seal]

G. J. LOMEN,

Notary Public in and for the District of Alaska.

Service of a copy of the foregoing Answer this 19th day of Dec. 1911, at — M., admitted.

WILLIAM A. GILMORE,

Of Attorneys for Plff.

[Endorsed]: #2349. *No. 2349.* In the District Court for the District of Alaska, Second Division. H. Greenberg, Plaintiff, vs. Jack Lesamis et al., Defendants. Answer of Stanley & Sallo. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. Dec. 20, 1911. John Sundback, Clerk. By ——— Deputy. L. O. D. Cochran and G. J. Lomen, Attorneys for Defendants. .
[18½]

*In the District Court for the District of Alaska,
Second Division.*

No. 2349.

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS, JOHN TYAPAY, ANDY GAR-
BIN, GEORGE STANLEY and SAM
SALO

Defendants.

**Separate Answer of Jack Lesamis, John Tyapay and
Andy Garbin.**

Come now the defendants Jack Lesamis, John Tyapay, and Andy Garbin, and for their separate answer to the complaint of the plaintiff in the above-entitled action, deny, admit and allege as follows:

I.

Except as hereinafter admitted or qualified, they deny each and every allegation, matter and thing in said complaint contained.

II.

They admit that on the 19th day of March, 1910, they were the owners of the premises mentioned and described in the complaint and that on said day they entered into the agreement and made the conveyances in said complaint in words and figures set forth, and that the consideration [19] paid and to be paid by the plaintiff for and on account of said agreement and conveyance were the considerations mentioned in said instruments and none other; that it

was then and there understood and agreed that the provisions in said agreement mentioned were to be furnished by said plaintiff free and without cost to said defendants, and that the deferred payment of twenty-four thousand dollars mentioned in the said conveyance was to be paid of the first money taken out of the ground, meaning and intending thereby that the first gold-dust extracted from the premises conveyed, to wit, the undivided one-quarter of the mining claims and property mentioned in said conveyance, was to be applied in payment of said twenty-four thousand dollars; in other words, one-quarter of the gross output of said mining claims mentioned in the complaint were to be so applied.

III.

The said defendants admit that the plaintiff paid the six thousand dollars in said agreement and conveyance mentioned, and furnished provisions under said agreement, but defendants allege that said plaintiff, in violation of said agreement, charged up against these answering defendants certain of said groceries so furnished, to the extent and aggregate amount of \$933.13.

IV.

Said defendants admit that under and pursuant to said agreement, they and the said plaintiff became and were mining copartners under the name and style of "KLERY CREEK MINING COMPANY," and during the summer and fall of 1910, they operated as such copartners, one of the claims mentioned in [20] said conveyance, to wit, No. 1 Above the Star Association Claim on Klery Creek.

V.

That the partnership above-mentioned was for an indefinite term and terminable at the will of any of said partners, and the same was, at the close of the mining season, to wit, the 9th day of September, 1910, in fact dissolved by mutual consent, and upon notice of the dissolution thereof given by these answering defendants to said plaintiff.

VI.

That a partial accounting and settlement of said partnership accounts was then and there had, and the books of said partnership then and there closed; that the total receipts of said partnership consisted of the gold-dust extracted from said No. 1 Above the Star Association Claim, and amounted in the aggregate of \$16,343.43, and that the total expenses of said partnership were in the aggregate \$7,788.62, leaving a balance of net profits of \$8,557.31, and leaving due each of said partners the sum of \$2,138.70; that under said agreement and conveyance set forth in the complaint, these defendants were, in addition to said net profits, entitled to receive from said plaintiff to be equally divided between them, these answering defendants, one-fourth of said gross receipts above mentioned, to wit, \$4,085.85, and to each of these answering defendants the sum of \$1,361.70.

That said plaintiff received all of said gold-dust, except gold-dust amounting to the value of \$720.00, which last gold-dust was received by one Martin F. Moran, who is still indebted to said partnership therefor. That said plaintiff paid [21] all the expenses of said partnership incurred in said mining

operations, and paid to these answering defendants the further sums, namely: To John Tyapay, \$1,666.00; to Jack Lesamis, \$1,000.00, and to Andy Garbin, \$1,333.00, and no more, leaving the following balance due from said plaintiff to each of these defendants, on account of said partnership transactions and on account of said one-quarter of the gross output of said mining operations, the latter to be applied in reduction of said indebtedness of twenty-four thousand dollars, as follows:

To John Tyapay, the sum of \$1,688.90; to Jack Lesamis and his assign, Sam Sallo, \$2,500.65, and to Andy Garbin and his assign, George Stanley, \$2,167.66.

VII.

That on or about the 2d day of Sept., 1911, the defendant Andy Garbin, for a valuable consideration, conveyed to George Stanley, his interest in said mining claims and property, including his interest in said bal. of net profits and in said twenty-four thousand dollars due from said plaintiff, and his interest in the royalties under the leases hereinafter mentioned; that the defendant Jack Lesamis on the same day, for a valuable consideration, conveyed to Sam Sallo his interest in said claims and property, including his interest in said balance of net profits and in said twenty-four thousand dollars due from said plaintiff, and his interest in royalties under the leases hereinafter mentioned; that said conveyances were made in good faith without any fraud or collusion whatever.

VIII.

That the said Stanley and Sallo, by reason of the said [22] conveyances and assignments to them made as aforesaid, are now entitled to have and receive from the said plaintiff the said moneys so assigned to them as aforesaid, and that said defendant Tyapay is entitled to the said balance due him as above specified.

IX.

That during the year 1911, the plaintiff, as a tenant in common with these answering defendants, and on his own account, mined and operated said No. 1 Above the Star Association Claim on Klery Creek, and extracted from said claim and converted to his own use gold-dust of the amount and value of \$8,713.38; that if said gold-dust was extracted and said mining done at a loss to said plaintiff, such loss did not, as the defendants are informed and believe, exceed the sum of \$15,861.61; that under said agreement and conveyance mentioned in the complaint, the plaintiff became and is now indebted to these defendants and their assigns Stanley and Sallo, above mentioned, in a sum equal to one-fourth of all of said gold-dust so extracted, to wit, in the sum of \$2,178.35, that is to say to said Tyapay, \$726.12; to said Stanley, \$726.12, and to said Sallo, \$726.12.

X.

That these answering defendants are the owners of the Star Association placer mining claim in the Noatak-Kobuk Recording District, District of Alaska, and that as such owners they are entitled to certain gold-dust extracted from said claim, to wit,

891½ Oz. 31½ Dwt. of gold-dust, of the value \$1,629.94; that said plaintiff, on or about the 1st day of September, 1911, took possession of said gold-dust without authority or consideration therefor, and converted the same [23] to his own use, to the damage of these answering defendants in the sum of \$1,629.94; that by reason of the premises the plaintiff is now indebted to these answering defendants and their assigns Stanley and Sallo, in the sum of \$8,955.50, with interest on \$5,639.71 thereof from the 9th day of September, 1910, at the rate of eight per cent per annum, and with interest on the sum of \$2,178.35 thereof from the 10th day of August, 1911, at the rate of eight per cent per annum; and on \$1629.94 thereof from September 1st, 1911, at the rate of eight per cent per annum.

XI.

These answering defendants admit that on or about the 24th day of October, 1911, one Phillip Murphey, claiming to be the assignee of Robertson, Magids Company, and Robertson, Magids & Company, of certain accounts of the alleged aggregate amount of \$17,124.00, began an action at law against these answering defendants, and the plaintiff herein to recover said amount with interest and costs and sued out a Writ of Attachment in said action; that said attachment has been levied upon certain of the properties mentioned in the complaint and in the conveyances above mentioned, but the defendants allege that the accounts so assigned to said Phillip Murphey and so sued upon as aforesaid were the accounts incurred by the plaintiff Greenberg, in his mining

operations during the year 1911 above mentioned, and were for expenses in said mining operations; that said accounts and expenses were caused, by said plaintiff, to be fraudulently charged against the Klery Creek Mining Company above mentioned, and were fraudulently caused to be assigned to said Phillip Murphey, and said action was collusively and fraudulently [24] caused by said plaintiff to be instituted and said attachment to be levied with the fraudulent intent and purpose on the part of said plaintiff of cheating and defrauding these defendants of their said properties. That with full knowledge on the part of said Robertson, Magids Company and Robertson, Magids & Company and said Phillip Murphey, of the rights and interests of the defendants herein, and of the said fraudulent intent and purpose on part of said plaintiff, the said Robertson, Magids Company, the said Robertson, Magids & Company, and the said Phillip Murphey aided, connived and conspired with said plaintiff in said fraudulent acts, purposes and intent aforesaid.

That plaintiff is a merchant and operator of large means, owning many mercantile concerns and branch stores in various places in Alaska, and is the president and a principal stockholder of the Robertson, Magids Company and the principal member of said Robertson, Magids and Company, and that said Phillip Murphey is one of his agents and employees in said businesses, and is the agent and attorney in fact of said plaintiff, and as such attorney in fact authorized to transact all manner of business for and on behalf of said plaintiff.

That said plaintiff, as a tenant in common of the said defendants herein, and not otherwise, during the year 1911, operated and mined upon that certain mining claim known as No. 1 Above the Star Association claim; that said operation and mining was fraudulently conducted by said plaintiff, in the name of the Klery Creek Mining Company, when in fact, as the plaintiff, the said Robertson, Magids Company, the said Robertson, Magids and Company and said Phillip Murphey then and there and at all times well knew, said mining was done and said claim was operated by and for the sole use and benefit of the [25] plaintiff, except in so far as the said plaintiff was liable to account to his cotenants for their share of the net profits of said mining and operation, if any.

That plaintiff fraudulently caused to be charged against said Klery Creek Mining Company the expenses of said mining and operation during the year 1911, including the items embraced within the accounts assigned to said Phillip Murphey, above mentioned being accounts assigned to said Murphey mentioned in the Complaint.

That said plaintiff fraudulently caused said accounts, without consideration paid therefor, as defendants are informed and believe, to be assigned to said Murphey, and thereafter caused said action to be brought and said attachment to be issued and levied as aforesaid.

That the plaintiff herein is, as defendants are informed and believe, the real party in interest in said action so instituted by said Phillip Murphey. That

said Murphey received and now holds the assigned accounts mentioned, upon and under a secret and fraudulent trust for the use and benefit of the plaintiff Greenberg, and under such trust prosecutes said action and attachment as a part of the said scheme of the said plaintiff to defraud the defendants herein of their said mining claims and property.

XII.

These defendants further allege that the only indebtedness of the Klery Creek Mining Company is a small account in favor of S. B. Marshal and Kayhill in the sum of \$2.50, and that these defendants are abundantly able to pay the same.

That the assets of said partnership, the Klery Creek [26] Mining Company, is the indebtedness of said plaintiff Greenberg to the defendants herein and an account of \$720.00 due from Martin F. Moran.

XIII.

These answering defendants admit that on August 10th, 1911, certain leases of a number of said mining claims belonging to said plaintiff and these answering defendants were made and executed; but these defendants allege that said leases were executed by said owners as tenants in common of said mining claims, and not by the Klery Creek Mining Co.

WHEREFORE these defendants pray that an accounting be had between said parties and that in such accounting an account be also made of the amounts due from said plaintiff to the defendants on account of moneys due under said purchase money contract above mentioned, and of all other matters and things growing out of said partnership or matters

connected therewith, and that judgment be entered in favor of the parties thereto entitled for such amounts as may be due from the parties each to the other, and for their costs and disbursements herein, and for such other and further relief as to the Court shall seem just.

O. D. COCHRAN,

G. J. LOMEN,

Attorneys for Defendants. [27]

District of Alaska,

Nome Precinct,—ss.

Andy Garbin, being first duly sworn, deposes and says:

That he is one of the defendants named in the foregoing answer, that he has read the same, knows the contents thereof, and that the same is true as he verily believes.

ANDY GARBIN.

Subscribed and sworn to before me this the 19th day of December, 1911.

[Notarial Seal]

G. J. LOMEN,

Notary Public in and for the District of Alaska.

Service of a copy of the foregoing Answer this 19th day of Dec. 1911, at — M., admitted.

WILLIAM A. GILMORE,

Of Attorneys for Plff.

[Endorsed]: No. 2349. In the District Court for the District of Alaska, Second Division. H. Greenberg, Plaintiff, vs. Jack Lesamis et al., Defendants. Answer of Garbin, Tyapay & Lesamis. Filed in the Office of the Clerk of the District Court

of Alaska, Second Division, at Nome. Dec. 20, 1911.
John Sundback, Clerk. By —————, Deputy. L.
O. D. Cochran, G. J. Lomen, Attorneys for Defendants,
Nome, Alaska. [28]

*In the District Court for the District of Alaska,
Second Division.*

No. 2349.

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS, JOHN TYAPAY, ANDY GAR-
BIN, GEORGE STANLEY and SAM SALO,
Defendants.

**Reply to Separate Answer of Jack Lesamis, John
Tyapay and Andy Garbin.**

Comes now the plaintiff and for reply to the
separate answer of Jack Lesamis, John Tyapay and
Andy Garbin, admits, denies and alleges as follows:

I.

Replying to paragraph II of said answer, plaintiff denies the affirmative allegations thereof, and specifically denies that it was ever the meaning or intention of the agreement mentioned in said paragraph, as stated in said paragraph, or any other meaning or intention than that stated in plaintiff's complaint.

II.

Replying to paragraph III of said answer, plaintiff denies that he charged up against the said defend-

ants certain groceries to the extent and amount of nine hundred thirty-three dollars and thirteen cents (\$933.13), in violation of the said agreement, or at all. [29]

III.

Replying to paragraph V of said answer, plaintiff denies that the said partnership was terminable at the will of any of said partners, or that said partnership was, on the 9th day of September, 1910, dissolved by mutual consent, or otherwise, or at all.

IV.

Answering paragraph VI of said answer, plaintiff denies that any partial account or settlement of said partnership accounts was on said 9th day of September, 1910, made or attempted to be made, or that the books of said partnership were then and there closed or attempted to be closed; and said plaintiff further denies all of the material affirmative allegations of said paragraph, and the whole thereof, except that he admits that one Martin F. Moran is still indebted to said partnership for gold received and that the plaintiff in the fall of 1910, paid to the defendant John Tyapay sixteen hundred and sixty-six dollars (\$1666.00) and to the defendant Jack Lesamis the sum of one thousand dollars (\$1,000.00) and to the defendant Andy Garbin the sum of thirteen hundred and thirty-three dollars (\$1333.00), which said sums were paid from the profits of the mining operations of said copartnership for the year 1910, and which were paid and intended to be paid to said defendants and each of them to apply on the said balance payment of twenty-four thousand dol-

lars (\$24,000.00) mentioned in said partnership agreement described in plaintiff's complaint.

And plaintiff particularly denies that at said time [30] or any other time there was a balance due to any of the said defendants from the gross output or net output of the operations of any of said partnership property in the sum mentioned in said paragraph or in any sums, or at all.

V.

Replying to paragraph VII of said answer, plaintiff denies that the said Andy Garbin for a valuable consideration conveyed his interest in said mining claims and property to the defendant George Stanley, or that he made the assignment alleged therein to the said Stanley for a valuable consideration; or that the said defendant Jack Lesamis on said date, or at any time, for a valuable consideration conveyed his interests in said partnership to the defendant Sam Salo or made the assignments therein alleged to the said Sam Salo for a valid consideration; and plaintiff alleges that said conveyances and assignments were made as alleged in plaintiff's complaint.

VI.

Replying to paragraph VIII of said answer, plaintiff denies that the said defendants Stanley and Salo are now or at any time have been entitled to receive from the plaintiff, or from the said partnership, any of said partnership property or moneys due thereunder.

VII.

Replying to paragraph IX of said answer, plaintiff denies each and every allegation, matter and

thing therein contained and the whole thereof, and particularly denies that he [31] is indebted to the defendants in any sum or sums whatsoever.

VIII.

Replying to paragraph X of said answer, plaintiff denies each and every allegation, matter and thing therein contained and the whole thereof, and particularly denies that he is indebted to the defendants in the sums therein named, or in any other sums whatsoever.

IX.

Replying to paragraph XI of said answer, plaintiff denies that the said accounts assigned to one Philip Murphy, mentioned in said paragraph, were fraudulently charged against the said Klery Creek Mining Company, or fraudulently assigned to said Philip Murphy, or that said action was collusively or fraudulently caused to be instituted, or that said action was brought for the purpose of cheating or defrauding the defendants, or that the said Robinson-Magids & Co., and the said Philip Murphy ever aided, connived and conspired in any way as alleged in said paragraph.

Plaintiff admits that he is one of the copartners of the firm of Robinson, Magids & Co., and that said Philip Murphy is one of the agents and employees of said company, and the agent and attorney in fact of the plaintiff.

Plaintiff denies that during the year 1911, the plaintiff, as a tenant in common with the said defendants, operated and mined on that certain placer mining claim known as No. 1 Above Star Associa-

tion claim, or that said operations and mining was fraudulently conducted by the plaintiff in the name of the Klery Creek Mining Company. [32]

Plaintiff denies that he ever fraudulently caused to be charged against said Klery Creek Mining Company the expenses of said operations, but alleges that all of the expenses of the operations conducted during the said year 1911 on said ground was the expense and cost of said Klery Creek Mining Company as alleged in said complaint.

Plaintiff denies that he fraudulently caused said accounts to be assigned to the said Philip Murphy, but alleges that said assignment was made in good faith by said Robinson, Magids & Co., for the purpose of collection.

And plaintiff further denies that the said Murphy now holds the said assigned accounts now sued upon under any agreed or fraudulent trust for the use and benefit of the plaintiff, Greenberg, or at all, but plaintiff alleges that said suit was brought in good faith for the purpose of collecting said accounts, which are justly and legally due to the said Robinson, Magids & Co.

X.

Replying to paragraph XII of said answer, plaintiff denies each and every allegation, matter and thing therein contained.

XI.

Replying to paragraph XIII of said answer, plaintiff denies that the leases mentioned in said paragraph were ever executed by the defendants as ten-

ants in common or otherwise, or in any other manner than as members of the Klery Creek Mining Company. [33]

WHEREFORE, plaintiff having fully replied to the answer of the defendants, prays for the relief demanded in his complaint.

WILLIAM A. GILMORE and
J. F. HOBBS,

Attorneys for Plaintiff.

United States of America,
District of Alaska,—ss.

H. Greenberg, being first duly sworn, deposes and says:

That he has heard read the above and foregoing reply, knows the contents thereof and the same is true as he verily believes.

H. GREENBERG.

Subscribed and sworn to before me this 8th day of August, A. D. 1913.

[Notarial Seal]

L. W. HAYDEN,

Notary Public in and for the District of Alaska.

My commission expires October 13, 1913.

Service of the above and foregoing reply admitted by receipt of copy, this 8 day of August, 1913.

G. J. LOMEN,

Of Attorneys for Defendants.

[Endorsed]: No. 2349. In the District Court for the District of Alaska, Second Division. H. Greenberg, Plaintiff, vs. Jack Lesamis et al., Defendants. Reply to Separate Answer of Jack Lesamis, John Tyapay and Andy Garbin. Filed in the Office

of the Clerk of the District Court of Alaska, Second Division, at Nome. Aug. 8, 1913. John Sundback, Clerk. By ———, Deputy. William A. Gilmore, Attorney at Law, Nome, Alaska, Attorney for Plaintiff. [34]

*In the District Court for the District of Alaska,
Second Division.*

No. 2349.

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS, JOHN TYAPAY, ANDY GARBIN, GEORGE STANLEY and SAM SALLO,
Defendants.

**Reply to Separate Answer of George Stanley and
Sam Sallo.**

Comes now the plaintiff and for reply to the separate answer of defendants George Stanley and Sam Sallo, admits, denies and alleges as follows:

I.

Replying to paragraph III of said answer, plaintiff denies that the conveyances and assignments mentioned and described in said paragraph were ever made for a valuable consideration or any consideration whatever.

II.

Replying to paragraph IV of said answer, plaintiff denies that the conveyances and assignments mentioned and described in said paragraph IV were

ever made for any valuable consideration, or any consideration at all.

III.

Replying to paragraph V of said answer, plaintiff [35] denies each and every allegation, matter and thing therein contained and the whole thereof, and particularly denies that the plaintiff is indebted to defendants in the sum or sums mentioned in said paragraph, or in any sum or sums whatsoever.

IV.

Replying to paragraph VI of said answer, plaintiff denies that on the 9th day of September, 1910, or any other time, said copartnership was terminated or that the books of said partnership were closed.

V.

Replying to paragraph VII of said answer, plaintiff admits that he paid the sums mentioned therein to Garbin and Lesamis, but denies each and every other allegation, matter and thing therein contained.

VI.

Replying to paragraph VIII of said answer, plaintiff denies each and every allegation, matter and thing therein contained and the whole thereof.

VII.

Replying to paragraph IX of said answer, plaintiff denies each and every allegation, matter and thing therein contained, and the whole thereof, and particularly denies that he is indebted to the defendants in the sum or sums mentioned in said paragraph, or in any other sum or sums whatsoever.

VIII.

Replying to paragraph X of said answer, plaintiff [36] denies each and every allegation, matter and thing therein contained and the whole thereof.

WHEREFORE, plaintiff having fully replied to the answer of the said defendants, Stanley and Sallo, prays for the relief demanded in his complaint.

WILLIAM A. GILMORE and
J. F. HOBBS,

Attorneys for Plaintiff.

United States of America,
District of Alaska,—ss.

H. Greenberg, being first duly sworn, deposes and says:

That he is the plaintiff in the above-entitled action; that he has heard read the above and foregoing reply, knows the contents thereof and the same is true as he verily believes.

H. GREENBERG.

Subscribed and sworn to before me this 8th day of August, A. D. 1913.

[Notarial Seal]

L. W. HAYDEN,

Notary Public in and for the District of Alaska.

My commission expires Oct. 13, 1913.

Service of the above and foregoing reply acknowledged by receipt of copy this 8th day of August, 1913.

G. J. LOMEN,

Of Attorneys for Defendants.

[Endorsed]: No. 2349. In the District Court for the District of Alaska, Second Division. H. Green-

berg, Plaintiff, vs. Jack Lesamis et al., Defendants. Reply to Separate Answer of George Stanley and Sam Sallo. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Aug. 8, 1913. John Sundback, Clerk. By _____, Deputy. William A. Gilmore, Attorney at Law, Nome, Alaska, Attorney for Plaintiff. [37]

*In the District Court for the District of Alaska,
Second Division.*

No. —.

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS, JOHN TYAPAY, ANDY GARBIN,
GEORGE STANLEY and SAM
SALLO,

Defendants.

Supplemental Answer and Cross-complaint.

Come now the defendants George Stanley and Sam Sallo, and for their supplemental answer and for a cross-complaint herein, allege:

I.

That said action was commenced in this court on the 1st day of November, 1911, by the filing of the complaint with the clerk of said court, and the issuing of a summons thereon.

That on the 20th day of December, 1911, the defendants above named filed their answer, in said action, the said defendants Stanley and Sallo filing a joint answer.

That said action is brought for the dissolution of an alleged mining copartnership, and for an accounting.

II.

That since the commencement of said action and the joining of issue therein, the plaintiff has neglected and refrained from mining or operating the mining claims mentioned in the complaint, and from extracting gold therefrom, or from [38] any or any part of said claims, and has neglected and refused to pay to the defendants the sum of twenty-four thousand dollars (\$24,000.00), the balance of the purchase price agreed by him to be paid according to the terms of the contract and conveyance set forth in the complaint herein.

III.

That it was understood and agreed by the plaintiff and the defendants, parties to the contract and deed of conveyance mentioned in the Complaint, and it was contemplated in and by said contract and conveyance, that the plaintiff should and would, with reasonable diligence, operate and mine the premises described in the Complaint and extract gold therefrom; and that out of the first money taken out of the ground purchased, to wit, the undivided one-fourth ($\frac{1}{4}$) of said premises, and meaning and intending the first or gross amount of gold-dust extracted therefrom, he, the said plaintiff, would and should pay to the grantors in said conveyance the said sum of twenty-four thousand dollars (\$24,000.00).

And it was further understood and agreed by and between the parties to the said contract and convey-

ance mentioned in the Complaint, that said twenty-four thousand dollars should and would be paid within a reasonable time; that more than a reasonable time has long since elapsed.

IV.

That since issue joined in said action a part of said claims have been mined by third persons under leases given by plaintiff and defendants, on a royalty basis; that the plaintiff has collected and received from said lessees one half ($\frac{1}{2}$) of said royalties amounting to the sum of [39] twelve hundred and twenty-six and $\frac{38}{100}$ dollars, but that plaintiff has neglected and refused to pay said royalties so received by him, or any part thereof, in liquidation of said twenty-four thousand dollars, or any part thereof, and has neglected and refused to account to the said defendants or any of them, for the royalties so received, or any part thereof.

V.

That during the years 1911, 1912 and in each of said years, the defendants Stanley and Sallo duly performed the assessment work on each of the following claims mentioned in the Complaint, to wit:

“1 and 2 Above Discovery on Bear Creek; The Rich Association on Bear Creek; the Central Association, 1 Below and 1 and 2 Above on Central Creek; Discovery Claim on Jack Creek and Rocky Association Rock Creek; in 1912 also on the No. 6 Below on Klery Creek and California Association; and in 1913 also on the No. 2 Above on Klery Creek; said Rocky Association, Discovery on Jack Creek and Fraction be-

tween Discovery and Star Association; said assessment work being of the value of, and aggregating in all the sum of Twenty-four hundred dollars (\$2400.00).”

That said plaintiff has neglected and refused to pay or contribute his proportion of said assessment work, to wit, one-half ($\frac{1}{2}$) thereof, to wit, one thousand two hundred dollars, (\$1,200.00) or any part thereof.

IV.

That on or about the 13th day of August, 1911, the defendant Andy Garbin, for valuable consideration, conveyed to the defendant Stanley, his interest in the premises described in the complaint, and assigned to said Stanley, his interest in the profits of said premises and in said twenty-four thousand dollars due from said plaintiff, and his interest in all royalties due under the leases above mentioned; and that on the same day defendant Jack Lesamis, for a valuable consideration, conveyed to the defendant Sallo, his interest [40] in said premises and assigned his interest in the profits of said premises and in said twenty-four thousand dollars due from said plaintiff, and his interest in all royalties under the leases above mentioned.

VII.

That by reason of the premises there is now due and owing from plaintiff to the defendants Stanley and Sallo, on account of the said purchase money agreed to be paid by plaintiff for said undivided one-fourth ($\frac{1}{4}$) of said premises, two-thirds of the sum of twenty-four thousand dollars (\$24,000.00), to wit,

\$18,000.00. That there is due from said plaintiff to said defendants Stanley and Sallo on account of assessment work performed by them above mentioned the sum of one thousand two hundred dollars.

WHEREFORE, defendants Stanley and Sallo pray that they have and recover judgment against plaintiff H. Greenberg for the sum of nineteen thousand and two hundred dollars, in addition to all money due them from said plaintiff on the accounting to be had in this action, and for such other and further relief as to the Court may seem just and proper, and for their costs and disbursements herein.

O. D. COCHRAN,

G. J. LOMEN,

Attorneys for Defendants Stanley and Sallo. [41]

United States of America,

District of Alaska,—ss.

Geo. Stanley, being first duly sworn, deposes and says: That he is one of the defendants named in the foregoing supplemental answer and cross-complaint; that he has read the same, knows the contents thereof, and that the same is true as he verily believes.

GEO. L. STANLEY.

Subscribed and sworn to before me this the 8th day of August, 1913.

[Notarial Seal]

G. J. LOMEN,

Notary Public in and for the District of Alaska.

My Comm. expires June 27, 1917.

Service of the within supplemental answer and cross-complaint of defendants Stanley and Sallo is

hereby admitted at Nome, Alaska, Aug. 12, 1913.

WILLIAM A. GILMORE,
Of Attys. for Plaintiff.

[Endorsed]: No. 2349. In the District Court for the District of Alaska, Second Division. H. Greenberg, Plaintiff, vs. Jack Lesamis et al., Defendants. Supplemental Answer and Cross-complaint. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. Aug. 12, 1913. John Sundback, Clerk. By ———, Deputy. G. J. Lomen and O. D. Cochran, Attorneys for Defendants. [42]

*In the District Court for the District of Alaska,
Second Division.*

No. —.

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS, JOHN TYAPAY, ANDY GAR-
BIN, GEORGE STANLEY and SAM
SALLO,

Defendants.

**Reply and Answer to Supplemental Answer and
Cross-complaint of Defendants George Stanley
and Sam Sallo.**

Comes now the plaintiff H. Greenberg, and for reply and answer to the supplemental answer and cross-complaint of defendants George Stanley and

Sam Sallo, admits, denies and alleges as follows:

I.

He admits the allegations of paragraph I thereof.

II.

Answering paragraph II thereof plaintiff denies each and every allegation, matter and thing therein contained, and the whole thereof, except as hereinafter alleged.

III.

Answering paragraph III thereof, plaintiff denies, each and every allegation, matter and thing therein contained, and the whole thereof. [43]

IV.

Answering paragraph IV thereof, plaintiff denies each and every allegation, matter and thing therein contained and the whole thereof, except that he admits that certain leases were given to third parties on the Klery Creek Mining Company's mining property, and that the plaintiff received a small amount of gold-dust as royalty thereof, which said royalty was applied by the plaintiff in the discharge and payment of the Klery Creek Mining Company's partnership indebtedness.

V.

Answering paragraph V thereof, plaintiff alleges that he has no knowledge or information of the facts therein stated, as to whether or not the defendants Stanley and Sallo did or did not perform the alleged work therein mentioned, and therefore deny the same.

And plaintiff further alleges in answer thereto,

that if said Stanley and Sallo did perform the assessment work mentioned therein, that the same was done at the instance and request of the defendants Lesamis and Garbin who were and are members of the Klery Creek Mining Company, owner of said placer claims.

VI.

Answering paragraph VI plaintiff denies each and every allegation, matter and thing therein contained, and the whole thereof, save and except that the defendants Andy Garbin and Jack Lesamis pretended to transfer certain interests in real and personal property of the Klery Creek Mining Company to the defendants Stanley and Sallo, but that the same was done without any consideration whatever.

[44]

VII.

Answering paragraph VII thereof, plaintiff denies each and every allegation, matter and thing therein contained, and the whole thereof, and particularly denies that there is now due and owing from the plaintiff to the defendants Stanley and Sallo the sums mentioned in said paragraph or any sum or sums whatsoever.

And for an affirmative reply and answer to the supplemental answer and cross-complaint of defendants George Stanley and Sam Sallo, plaintiff alleges as follows:

I.

That at all times since the 19th day of March, 1910, it was the intention and meaning of the Klery Creek Mining Company, as expressed in the written con-

tract of partnership set forth in plaintiff's complaint in this action, that the plaintiff and the defendants Andy Garbin, Jack Lesamis and John Tyapay, jointly as copartners and not otherwise, should mine and operate the placer claims belonging to said Klery Creek Mining Company described in the plaintiff's complaint, and after deducting the expenses of operations from the gross output, from the first profits pay to the said Garbin, Lesamis and Tyapay the said sum of twenty-four thousand dollars (\$24,000.00) and not otherwise.

II.

That on or about the —— day of September, 1911, the said defendants Garbin and Lesamis refused to further comply with the terms of the said agreement of copartnership, [45] and refused to further mine and operate said claims or assist the plaintiff as a copartner in operating the same, and at all times since said time have contended and claimed that the said copartnership was dissolved.

III.

That for and because of said refusal of said defendants Garbin and Lesamis to further mine and operate said placer claims as copartners under the terms of said agreement, plaintiff instigated this action for an accounting and dissolution of said copartnership, and the same has been pending trial ever since. That the said defendants George Stanley and Sam Sallo were not parties to the said partnership agreement and were not interested in any way in the formation of said Klery Creek Mining Company, and plaintiff has never at any time recognized the

said defendants Stanley and Sallo as copartners in said Klery Creek Mining Company, and does not now recognize them as copartners, but still contends and claims that the said defendants Lesamis, Garbin and Tyapay are members of said copartnership and that the plaintiff is entitled to an accounting between himself and said defendants Lesamis and Garbin and Tyapay, under the original terms and conditions of said copartnership agreement, and is also entitled to all other relief prayed for in his original complaint against said defendants.

WHEREFORE plaintiff having fully replied to the supplemental answer and cross-complaint of said defendants Stanley and Sallo, prays the Court for the relief demanded in his complaint.

J. F. HOBBS and
WILLIAM A. GILMORE,
Attorneys for Plaintiff. [46]

United States of America,
District of Alaska,—ss.

H. Greenberg, being first duly sworn, says: That he is the plaintiff in the above and foregoing action; that he has heard read the above and foregoing reply and knows the contents thereof, and the same is true as he verily believes.

H. GREENBERG.

Subscribed and sworn to before me this 13th day of September, A. D. 1913.

[Notarial Seal] WILLIAM A. GILMORE,
Notary Public in and for the District of Alaska.
My commission expires July 27, 1915.

Service of above and foregoing reply admitted by copy this 13th day of Sept. 1913.

G. J. LOMEN,
Of Attys. for Defs.

[Endorsed]: No. 2349. In the District Court for the District of Alaska, Second Division. H. Greenberg, Plaintiff, vs. Jack Lesamis et al., Defendants. Reply and Answer to Supplemental Answer and Cross-complaint of Defendants George Stanley and Sam Sallo. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome, Sept. 15, 1913. J. Sundback, Clerk. By J. A. B., Deputy. J. F. Hobbes and William A. Gilmore, Attorneys at Law. Nome, Alaska, Attorneys for Plaintiff. [47]

*In the District Court for the District of Alaska,
Second Division.*

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS et al.,

Defendants.

Opinion.

On November 1st, 1911, plaintiff H. Greenberg filed his petition in this court alleging that on the 19th day of March, 1910, plaintiff and defendants, Jack Lesamis, John Tyapay and Andy Garbin, entered in to a copartnership agreement to work and mine certain claims described in the complaint; that said copartnership has never been dissolved; and that

plaintiff is entitled to an accounting, and prays that an accounting be had and that the copartnership be dissolved.

Defendants, Lesamis, Tyapay and Garbin, admit in their answer, that "they and the said plaintiff became and were mining copartners under the name and style of Klery Creek Mining Co. and during the summer and fall of 1910 they operated as such copartners one of the claims mentioned in said conveyance, to wit: No. One Above the Star Association Claim on Klery Creek"; but allege that the partnership was dissolved by mutual consent on the 9th day of September, 1910; also allege a conveyance of all their claims and interests to the defendants Stanley and Sallo on the 2d day of September, 1911. The defendants Stanley and Sallo, by their answer, allege that they purchased the interests of Garbin and Lesamis, and are now the owners and have been such owners since September 2d, 1911. Also by their supplemented answer and cross-complaint set up the performance of assessment work on the claims, and [48] allege that the balance of the twenty-four thousand dollars (\$24,000.00) is now due because of plaintiff's failure to work the mining claims with proper diligence.

Plaintiff by reply denies the affirmative matter of the various answers, also the cross-complaint.

From these pleadings it will be seen that the main issues to be decided by the Court are:

First, was the partnership between plaintiff and defendants Lesamis, Tyapay and Garbin dissolved by mutual consent in September, 1910?

Second, from what fund or proceeds was the balance of the purchase price of twenty-four thousand dollars (\$24,000.00) to be paid?

Third, were the conveyances to Stanley and Sallo valid or void for want of consideration, and if valid, did they take title subject to all obligations of the partnership?

Fourth, are the defendants entitled to credit for expenditures and work done on the claims in controversy to prevent a forfeiture?

The first question should be answered in the negative. All the acts of defendants subsequent to the cessation of operations, in the fall of 1910 up to the time work was closed down in the fall of 1911, were inconsistent with the theory that the partnership had been dissolved in 1910.

In answering the second question, it must be admitted that the deed and contract between plaintiff and defendants were not as explicit as they might be, and if it were not for the interpretation placed upon the instruments by the defendants as indicated by their settlement, in the fall of 1910, and by the subsequent deed executed by two of the defendants, and the general conduct of all of the defendants, the Court would be inclined to construe the contracts to mean that the twenty-four thousand dollars (\$24,000.00) balance of the [49] purchase price should be paid from the proceeds of plaintiff's one-fourth interest, but from the acts of the defendants, it becomes very clear that the intent of the parties was that the balance of the purchase price was to be paid from the net proceeds of the mining claims men-

tioned in the copartnership agreement and deed.

The third proposition to be passed upon by the Court is made clear by the testimony of the defendants. No consideration passed from the grantee to the grantors and as against the plaintiff, at least, the conveyances are void. Defendants Stanley and Sallo can be no more than trustees for defendants Lesamis and Garbin. In view of the fact that defendants Stanley and Sallo appear to hold the title in trust for Lesamis and Garbin, any work done by them for the purpose of protecting the title and preventing a forfeiture should be allowed in the final accounting, and plaintiff Greenberg should be required to pay one-fourth of such necessary expenditures.

Plaintiff Greenberg is entitled to an accounting, and the mining claims mentioned in the complaint are liable for the debts of the copartnership.

The copartnership should be dissolved and the assets of the copartnership sold, and from the proceeds the costs and expenses of this litigation should first be paid, then the indebtedness of the copartnership, after which the balance of the purchase price agreed to be paid by plaintiff Greenberg, and the balance, if any, should be divided equally between the plaintiff Greenberg and the defendants Lesamis, Tyapay and Garbin, or their assigns.

For the purpose of making findings, the Court suggests that at the close of the mining season of 1910, the defendants Lesamis, Tyapay and Garbin were each entitled to receive the sum of two thousand four hundred and sixty-three dollars and eighty-nine cents [50] (\$2,463.89). Lesamis received one thousand,

seventeen hundred twenty-six dollars (\$1,726.00); Tyapay, two thousand dollars (\$2,000.00); Garbin, one thousand five hundred and twelve dollars and nineteen cents (\$1,512.19). The balance remained on hand and they should each receive credit for the respective amounts to be applied on the next year's expense. Said defendants should each pay one-fourth of the 1911 expense, less this credit from the 1910 operations, and plaintiff Greenberg should, after applying the gross output for that year, be charged with the balance of the expense for the year 1911. It does not appear from the testimony that the plaintiff Greenberg contributed anything towards the expense for the year 1911 except by securing a line of credit with the Robinson-Magids Company, and everything furnished by said company was charged to the Klery Creek Co. and not to the plaintiff Greenberg.

Let findings of fact and conclusions of law be prepared in accordance with this memorandum opinion.

CORNELIUS D. MURANE,

U. S. District Judge.

Dated this 21st day of October, 1913, Nome, Alaska.

[Endorsed]: No. 2349. In the District Court for the District of Alaska, Second Division. H. Greenberg vs. Jack Lesamis et al. Memo. Opinion. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Oct. 21, 1913. John Sundback, Clerk. By J. A. B., Deputy. [51]

*In the District Court for the District of Alaska,
Second Division.*

No. 2349.

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS, JOHN TYAPAY, ANDY GARBIN,
GEORGE STANLEY and SAM SALLO,

Defendants.

Findings of Fact and Conclusions of Law.

This cause being an equitable action, having come on regularly to be heard before the Court on the 15th day of September, 1913, and the trial thereof continuing thereafter from day to day to the 19th day of September, 1913, the plaintiff appearing in person and by his attorneys Messrs. J. F. Hobbes and William A. Gilmore, and the defendants appearing in person and by their attorney, G. J. Lomen, Esq., and witnesses on behalf of the plaintiff and defendants having been sworn and testified, and documentary evidence and depositions on behalf of the parties hereto having been read and introduced in evidence, and the Court having heard the arguments of counsel for the respective parties and having thereafter and on the 21st day of October, 1913, rendered and filed its written opinion herein, and being now fully advised in the premises, makes the following FINDINGS OF FACT AND CONCLUSIONS OF LAW, to wit:

FINDINGS OF FACT.

I.

The Court finds that heretofore and on the 19th [52] day of March, 1910, and for a long time prior thereto, the defendants, Jack Lesamis, John Tyapay and Andy Garbin were the owners and in the possession of certain placer mining claims situated in the Noatak-Kobuk Mining and Recording District, District of Alaska, and that legal title to said placer mining claims stood in the names of said defendants by virtue of certain placer locations by them made in said mining district; that on the said 19th day of March, 1910, the said defendants, Jack Lesamis, John Tyapay and Andy Garbin, entered into certain written instruments whereby and wherein they agreed with the plaintiff to form a copartnership to work and mine said mining claims, and to give and convey to the plaintiff an undivided one-quarter ($\frac{1}{4}$) interest in all of said placer claims, lode claims and water rights then owned, acquired or to be acquired by said defendants in consideration of the plaintiff furnishing them with provisions from time to time from the said 19th day of March, 1910, to July, 1910, and agreed to pay the defendants the sum of six thousand dollars (\$6,000) in cash and thereafter the further additional sum of twenty-four thousand dollars (\$24,000) from the net profits of said mining operations to be thereafter conducted and had upon said mining claims; that the said agreement between the parties, plaintiff and said defendants, was reduced to writing and incorporated in the following

two written instruments, which said instruments were executed, witnessed and delivered between the parties, to wit:

“AGREEMENT.

Klery Creek, March 19th, 1910.

Know all men by these presents That we the undersigned John Tyapay, Andy Garbin and Jack Lesamis of the Noatak-Kobuk recording [53] district, District of Alaska, and H. Greenberg of Nome, Ala. enter into this agreement, that for the sum of one dollar lawful money of the United States in hand paid and other valuable services, for same services H. Greenberg is, and shall be a full fledged partner with the above mentioned parties & have one quarter undivided interest in all claims, lodes, water rights acquired or to be acquired and owned by the above-mentioned parties. It is further agreed that H. Greenberg is to furnish the above mentioned parties with Provisions from time to time up till July, 1910.

ANDY GARBIN. (Seal)

JACK LESAMIS. (Seal)

JOHN TYAPAY. (Seal)

H. GREENBERG.

Witnesseth:

SAM MAGIDS,

HERMAN BERNHARDT.

This indenture made the 19th day of March in the year of our Lord one thousand nine hundred and ten between the undersigned Andy Garbin, Jack Lesamis and John Tyapay of the Noatak-Kobuk Recording District, of the District of Alaska, parties of the first part and H. Greenberg of Nome, Alaska, party of the second part witness, That the said parties of the first

part, for and in consideration of the sum of Thirty thousand dollars (\$30,000.00).

Six Thousand dollars (\$6,000.00) in lawful money of the United States of America to them in hand paid by said party of the second part, the receipt whereof is hereby acknowledged, and the balance of twenty-four thousand to be paid of the first money taken out of the ground hath, granted, bargained, sold, remised, released, and forever quit-claimed and by these presents doth grant, bargain, sell, remise release and forever quit-claim unto the said party of the second part, his heirs and assigns one quarter ($\frac{1}{4}$) undivided of all [54] mining claims located surveyed, *ecorded* and held by said parties of the first part situated in Noatak-Kobuk mining district *district* of Alaska, together with all the dips, spurs and angles and also the metals, ores, gold and silver bearing quartz, rock and earth therein, and all the rights, privileges and franchises thereto incident, appendant and appurtenant or therewith usually had or enjoyed; and also all and singular the tenements, hereditaments and appurtenances, thereunto belonging, or in any wise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well as in law as in equity, of the said party of the first part, of in or to the said premises and every part or parcel thereof, with appurtenances.

To have and to hold, all and singular, *he* said premises, together with the appurtenances and privileges thereto incident, unto the said party of the

second part his heirs and assigns forever warranting and defending the same against the claims of all persons, save and except the United States.

ANDY GARBIN. (Seal)

JACK LESAMIS. (Seal)

JOHN TYAPAY. (Seal)

Witnesseth:

SAM MAGIDS,

HERMAN BERNHARDT.”

II.

The Court finds that thereafter and at all times since said 19th day of March, 1910, plaintiff has fulfilled and carried out the terms, covenants and conditions on his part to be done, made, kept and performed, and did furnish the [55] defendants with the provisions mentioned in said written instrument and did pay to the defendants the sum of \$6,000.00 in lawful money of the United States, and the said defendants thereupon and in pursuance of the terms of said written instrument, entered into the mining copartnership known, named and called the Klery Creek Mining Company, and thereupon began mining operations upon said placer claims heretofore referred to and hereinafter named and set forth.

III.

The Court finds that at the time said instruments were executed and delivered and at the time said mining copartnership was formed, the said defendants Jack Lesamis, John Tyapay and Andy Garbin, were the owners and in the possession of the following placer mining claims, to wit:

Discovery Claim; One Above Discovery, Two Above Discovery, Six Below Discovery, Fraction between Two and Three Above Discovery, Association Fraction between Discovery and Starr, California Association, L. L. Klery Creek, opposite Discovery, Butte Association, R. L. Klery Creek, opposite Discovery, Oregon Association (Bench and Creek) adjoining upper and Starr, and lower end of 1 and 2 Above Discovery, Bench Seven, opposite Creek Claim Seven Below Gold Hill Association R. L. opposite 1, 2, 3 and 4 creek claims, all the foregoing claims being situated on Klery Creek, or its benches; also Honey Claims, one and two, between Klery and Bear Creeks, Northpole Association L. L. Adjoining claims, last above described, One and Two Above Discovery, on Bear Creek, Goldfield Association, opposite 1 and 2 above and 1 below L. L. Bear Creek, Rich Association on Bear Creek, and adjoining 2 above [56] Central Association, adjoining No. 1 below on Central Creek, Discovery on Central Creek, One above on Central Creek, One Below on Central Creek, Fraction (Garbin) on Central Creek, Discovery Claim on Jack Creek, a tributary of Klery; all interest of said first party in all mining claims owned in whole or part in Rocky Creek, in said mining and recording district.

And the Court further finds that all of said mining claims were put into said mining copartnership as assets by said defendants, and thereupon the said Klery Creek Mining Company entered into possession of said claims and began to mine and operate the same as a mining copartnership; that thereafter the

said Klery Creek Mining Company operated said mining claims on said Klery Creek and vicinity, in the Noatuk-Kobuk Recording District, between the said 19th day of March, 1910, and the first day of September, 1911; that during said term and time said mining claims were operated at a loss to said mining copartnership of \$16,484.82, and that said indebtedness is due with legal interest to date, to Robinson-Magids & Company, or its assignee, for goods, wares and merchandise and for money advanced and paid out at the request of said Klery Creek Mining Company.

IV.

The Court finds that on or about the first day of September, 1911, the said Klery Creek Mining Company executed several written leases upon several of the said mining claims above mentioned belonging to the said Klery Creek Mining Company, for the purpose of having said mining claims mined during the winter of 1911, under all of which leases certain stipulated [57] royalties were reserved to be paid to the said mining copartnership.

V.

The Court finds that theretofore and on or about the first day of September, 1911, the defendants Andy Garbin and Jack Lesamis, in violation of the terms and conditions of the said copartnership agreement, conveyed, without consideration, to defendants George L. Stanley and Sam Sallo, all of their right, title and interest in the said Klery Creek Mining Company copartnership property, real and personal, and the Court finds that said conveyances were void

as against the plaintiff and the creditors of said Klery Creek Mining Company, and that said defendants, Stanley and Sallo are trustees for defendants Garbin and Lesamis.

VI.

The Court finds that the said written instruments executed and delivered as above set forth were thereafter recorded in the office of the Noatuk-Kobuk Recording District, on the 29th day of March, 1910, and the said defendants, George L. Stanley and Sam Sallo took and received the said transfers of title from the said defendants Andy Garbin and Jack Lesamis, with full knowledge and notice of the said copartnership and with full knowledge and notice of the fact that the said Klery Creek Mining Company had outstanding indebtedness at said time of the sum of \$16,484.82, incurred in mining operations theretofore conducted. [58]

VII.

The Court finds that all of said royalties due or collected from the placer claims above described and set forth belonged to the Klery Creek Mining Company.

VIII.

The Court finds that heretofore and on the 24th day of October, 1911, one Philip Murphy, claiming an assignment of the account of Robinson-Magids & Company, creditors of said Klery Creek Mining Company, began an action at law in the above-entitled court, for the collection of \$17,124.00 and interest, against the said Klery Creek Mining Company, and caused to be issued a writ of attachment against

the mining property of said Klery Creek Mining Company; that the indebtedness of the said Klery Creek Mining Company to the said Philip Murphy, assignee of said Robinson-Magids & Company, should be paid from the first proceeds of the assets and property of said Klery Creek Mining Company, after the expenses of this litigation is settled, and before any balance sum due the said defendants is paid, from the proceeds or assets of said mining copartnership.

IX.

The Court finds that owing to the acts and actions of the defendants, it is impossible for the plaintiff and said defendants to further act and conduct the mining copartnership in the management and workings of said mining copartnership property and mining claims; that said defendants Stanley, Sallo, Garbin, Lesamis and Tyapay, are all insolvent [59] and have no other property of value other than their interest in said copartnership property, and that the assets of the said Klery Creek Mining Company consists of said mining claims above described, and certain personal property incident thereto and upon said mining claims, and that the said Klery Creek Mining Company has no money or other property except the said placer claims and personal property therewith connected to pay its indebtedness.

X.

The Court finds that the total gold production of 1910 of said Klery Creek Mining Company was \$16,251.42 and that the total expense of the said Klery Creek Mining Company for 1910 was \$8,959.75,

leaving a net profit of \$7,391.67, of which the said defendant, Jack Lesamis received \$1,726.00; John Tyapay, \$2,000.00, and Andy Garbin, \$1,512.12, and the said Lesamis had a credit for 1911 of \$737.89, and the said John Tyapay had a credit of \$463.89, and the said Andy Garbin had a credit of \$951.70.

That the total expense for the year 1911 was \$26,271.70 and the total gold production for the year 1911 amounted to \$9,786.88, leaving an indebtedness due the Robinson-Magids & Company or its assignee, Philip Murphy, of \$16,484.82 on the first day of September, 1911, with legal interest to date, amounting to \$2,830.12; that the Court further finds that the defendants in the years 1911 and 1912, in order to prevent a forfeiture, did the annual assessment work on certain claims mentioned in paragraph V of the supplemental answer and cross-complaint of defendants Stanley and Sallo, of the total value [60] of \$2,400.00, and that said amount is chargeable as indebtedness against the said Klery Creek Mining Company, and the defendants are entitled to be credited with the same.

XI.

The Court finds that the total indebtedness of said Klery Creek Mining Company, due to said Robinson-Magids & Company, or its assignee, Philip Murphy, with legal interest to date, amounts to \$19,314.94, and that each of the said partners would be indebted to the said Klery Creek Mining Company for the sum of \$4,828.73, less the credits above mentioned, and that the said defendant Lesamis is indebted to the said Klery Creek Mining Company in

the sum of \$4,429.21; that the said defendant Tyapay is indebted to the Klery Creek Mining Company in the sum of \$4,703.21; that the said defendant Garbin is indebted to the said Klery Creek Mining Company in the sum of \$4,215.40; that the plaintiff Greenberg is indebted to the Klery Creek Mining Company in the sum of \$5,967.10.

XII.

The Court finds that it was the intent and meaning of the parties in forming said copartnership that the balance payment of \$24,000 was to be paid from the net profits from the mining operations of the copartnership property, and that the defendants, Jack Lesamis, Andy Garbin and John Tyapay, have received on the said sum of \$24,000 the total sum of \$5,238.19, leaving a balance due to said defendants or their assigns from the net profits, the sum of \$18,761.81. [61]

XIII.

The Court finds that the allegations contained in the answers of the defendants that said balance payment was due from the first gold-dust extracted and taken from the undivided one-quarter ($\frac{1}{4}$) interest in said mining property, is not supported by the evidence, and is untrue.

XIV.

The Court further finds that all allegations in the answers of the defendants and in their supplemental answer and cross-complaint inconsistent with the above and foregoing findings, are not supported by the evidence in the case and are untrue.

Conclusions of Law.

And from the above and foregoing Findings of Fact, the Court now makes the following

CONCLUSIONS OF LAW.**I.**

That the plaintiff, Greenberg, is entitled to an accounting and the mining claims and personal property situated thereon, mentioned in the complaint, are liable for the debts of the copartnership; that the copartnership should be dissolved and the assets of the copartnership sold, and from the proceeds the costs and expenses of this litigation should be paid, then the indebtedness of the copartnership, after which the balance of the purchase price agreed to be [62] paid by the plaintiff Greenberg should be paid, and the balance, if any, of said proceeds should be equally divided between the plaintiff Greenberg and the defendants Lesamis, Tyapay and Garbin, or their assigns.

II.

That the plaintiff Greenberg is entitled to a final decree of this Court dissolving the said copartnership and directing the sale of the assets thereof, and the application of the proceeds of said assets to the payment of the indebtedness of said copartnership, and the distribution of the same, as above provided.

Done in open court this 28 day of October, 1913.

CORNELIUS D. MURANE,

District Judge.

Service of foregoing Findings and Conclusions ad-

mitted by receipt of a copy this 24th day of Oct., 1913.

G. J. LOMEN,
Of Attys. for Defs.

[Endorsed]: No. 2349. In the District Court for the District of Alaska, Second Division. H. Greenberg, Plaintiff, vs. Jack Lesamis et al., Defendants. Findings of Fact and Conclusions of Law. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Oct. 28, 1913. John Sundback, Clerk. By J. A. B., Deputy. J. F. Hobbes and William A. Gilmore, Attorneys at Law, Nome, Alaska, Attorneys for Plaintiff. Vol. 10. Orders & Judgments, p. 359. C. [63]

*In the District Court for the District of Alaska,
Second Division.*

No. —.

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS, JOHN TYAPAY, ANDY GARBIN, GEO. STANLEY and SAM SALLO,
Defendants.

**Defendants' Exceptions to the Findings of Fact and
Conclusions of Law.**

Now come the defendants above named and except to the Findings of Fact and Conclusions of Law, made and filed herein on the 28 day of October, 1913, and in particular as follows:

1.

The defendants except to the first Finding of Fact for the reason and on the ground that the same is not justified by the evidence, and except in particular to that portion of said finding wherein the Court finds that on the 19th day of March, 1910, the said defendants Jack Lesamis, John Tyapay and Andy Garbin, entered into certain written instruments whereby and wherein they agreed with the plaintiff [64] to form a copartnership to work and mine the said mining claims therein described, and to give and convey to the plaintiff an undivided one-quarter interest in all of said placer claims, lode claims and water rights, then owned, acquired or to be acquired by said defendants, in consideration of the plaintiff furnishing them with provisions from time to time from said 19th day of March, 1910, to July, 1910, and agreed to pay the defendants the sum of \$6,000.00 in cash, and thereafter the further and additional sum of \$24,000.00 from the net profit of said mining operations, to be thereafter conducted and had upon said mining claims.

2.

The defendants except to the second Finding of Fact on the ground and for the reason that the same is not justified by the evidence, and particularly except to that portion of said finding wherein it is found that the plaintiff has fulfilled and carried out the terms, covenants and conditions of said contract on his part to be done, made, kept and performed, and also especially except to that portion of said finding wherein it is found by the Court that said de-

fendants in pursuance of the terms of the written instruments set out in Finding No. 1, entered into the mining copartnership known as the Klery Creek Mining Company, and thereupon began mining operations upon said placer mining claims referred to in said Finding No. 1; and said defendants request the Court to find when and in what manner mining operations were commenced upon said placer mining claims, or any of them, other than on the claim known as No. 1 Above the Star Association on Klery [65] Creek; and defendants further request the Court to find as a matter of fact that the mining copartnership between plaintiff and the defendants, Lesamis, Tyapay and Garbin, was dissolved upon notice, and by the conduct and implications of the parties in September, 1910.

3.

The defendants except to Finding of Fact No. 3, for the reason and on the ground that the same is not justified by the evidence, and said defendants particularly except to that portion of said finding wherein the Court finds that said mining claims were put into said mining copartnership as assets by said defendants and thereupon said Klery Creek Mining Company entered into the possession of said claims and began to mine and operate the same as a mining copartnership. And said defendants request the Court to find as a matter of fact when and in what manner any of said mining claims were put or brought into said mining copartnership as assets, or otherwise, and when and in what manner the Klery Creek Mining Company, entered into the possession

of said claims, or any of them, and on what claim or claims, if any, the said Klery Creek Mining Company, began to mine and operate any claim or claims as a mining copartnership.

And the defendants except particularly to that portion of said finding wherein the Court finds that the Klery Creek Mining Company operated said claims on said Klery Creek and vicinity, and any claim other than No. 1 Above the Star Association on said Klery Creek; and also especially except to that portion of said finding wherein the Court finds as a fact that the parties to said action operated any mining claim after September, 1910, whether at a loss or [66] otherwise. And the defendants request the Court to find that all mining operations on the mining claims belonging to the parties to said action during the year 1911, were done by and at the risk of the plaintiff, H. Greenberg, and at his own loss.

And defendants except particularly to that portion of said finding wherein the Court finds that any claim or claims were operated during the year 1911, at a loss to said mining copartnership known as the Klery Creek Mining Company, and that said loss amounted to \$16,484.82, and that said indebtedness is due with legal interest to date, to Robinson, Magids & Company, or its assigns, for goods, wares and merchandise and for money advanced and paid out at the request of said Klery Creek Mining Company, said last portion of said finding being not only not justified by the evidence but is irrelevant and immaterial to the issues in said action.

4.

The defendants above named except to Finding of Fact No. 4 herein on the ground and for the reason that the same is not justified by the evidence, and especially except to that portion of said finding wherein the Court finds that the Klery Creek Mining Company, executed several written leases of said mining claims. And said defendants request the Court to find that all leases issued upon mining claims mentioned in said finding were executed and delivered by the owners of said claims, said plaintiff and defendants, as tenants in common and not otherwise.

And defendants especially except to that portion of said finding wherein the Court finds that under all of said leases certain stipulated royalties were reserved to be [67] paid to the said mining copartnership. And the defendants request the Court to find as a matter of fact that all reservation of royalties in said leases were made for the use and benefit of the lessors therein named, the said plaintiff and defendants as tenants in common, and not to any mining copartnership. And the defendants request the Court to find as a matter of fact by whom royalties were reserved and collected on account of said leases and what amount of royalty was reserved and collected, and by whom.

5.

The defendants except to the fifth Finding of Fact for the reason and on the ground that the same is not justified by the evidence, and especially except

to that portion of said finding wherein the Court finds as a matter of fact that the defendants Andy Garbin, and Jack Lesamis, in violation of the terms and conditions of said, or any, copartnership agreement, conveyed, without consideration, to the defendants George L. Stanley and Sam Sallo, all of their right, title and interest in the Klery Creek Mining Company's copartnership property, and also to that portion of said finding wherein the Court finds that said conveyances were void as against the plaintiff and the creditors of said Klery Creek Mining Company, and also to that portion of said finding wherein the Court finds that said Stanley and Sallo are trustees for the defendants, Garbin and Lesamis.

6.

The defendants except to the sixth Finding of Fact on the ground and for the reason that the same is not justified by the evidence, and especially except to that [68] portion of said finding wherein the Court finds that the conveyances to said defendants, Stanley and Sallo were recorded March 29th, 1910, and also to that portion of said finding wherein the Court finds that the defendants, Stanley and Sallo, had knowledge and notice of the fact that said Klery Creek Mining Company had outstanding indebtedness at said time in the sum of \$16,484.82.

7.

The defendants except to the seventh Finding of Fact on the ground and for the reason that the same is not justified by the evidence.

8.

The defendants except to the eighth Finding of Fact on the ground and for the reason that the same is not justified by the evidence, to wit, so much thereof that finds that the indebtedness of said Klery Creek Mining Company, to said Philip Murphy, assignee of Robinson, Magids & Company, should be paid from the first proceeds of the assets and property of said Klery Creek Mining Company, or at all. And said defendants request the Court to find as a matter of fact that the action brought by Philip Murphy, against the Klery Creek Mining Company, is still pending and untried, and that the allegations of the complaint of said Philip Murphy are traversed by the answer of the defendants herein.

9.

The defendants except to the ninth Finding of Fact herein on the ground and for the reason that the same is not justified by the evidence, and said defendants request the Court to find as a matter of fact that the partnership existing between the plaintiffs and defendants herein was [69] long since dissolved.

The defendants further especially except to said finding and that portion thereof wherein the Court finds that the defendants Stanley, Sallo, Garbin, Lesamis and Tyapay are all insolvent. And said defendants request the Court to find as a matter of fact that said plaintiff, H. Greenberg, is solvent, and that said plaintiff, Greenberg is indebted to each of said defendants in large sums of money, and in amounts greater than any indebtedness of said defendants, or

any of them, and that the Court further find the amount of the indebtedness due from said plaintiff to each of said defendants.

The defendants except to that portion of said finding wherein the Court finds that the defendants have no other property of value other than their interest in said copartnership property, and also to that portion of said finding wherein the Court finds that the assets of said Klery Creek Mining Company consist of said mining claims theretofore described.

10.

The defendants except to the tenth Finding of Fact on the ground and for the reason that the same is not justified by the evidence, and especially to so much of said finding as finds as a matter of fact that the total expenses for the year 1911 of the Klery Creek Mining Company, were \$8,959.75 or more than \$7,788.62, and again to so much of said finding as finds as a fact that there is an indebtedness due to the Robinson, Magids Company, or its assignee, Philip Murphy, of \$16,484.82, with legal interest from September 1st 1911, and to so much of said finding as finds that the amount due for assessment work, viz., \$2,400.00, is due the [70] defendants, and that the defendants other than Stanley and Sallo are entitled to be credited with the same.

11.

The defendants except to the eleventh Finding of Fact herein on the ground and for the reason that the same is not justified by the evidence, and to each and every part thereof.

12.

The defendants except to the twelfth Finding of Fact herein on the ground and for the reason that the same is not justified by the evidence, and especially to so much of said finding that finds as a matter of fact that the \$24,000 in said finding mentioned was or is to be paid from the net profits from the mining of the copartnership property. And the defendants request the Court to find as a matter of fact that said \$24,000 was the balance of purchase money unpaid and is due by the plaintiff H. Greenberg out of his undivided one-quarter interest in the property mentioned in the complaint and not otherwise, whether out of the gross or net proceeds of such one-quarter interest less \$4,085.85 paid thereon.

13.

The defendants except to the thirteenth Finding of Fact on the ground and for the reason that the same is not justified by the evidence, and especially to so much of said finding as finds that the balance of said \$24,000.00, is not due from said undivided one-quarter interest in said mining property, to wit, out of the plaintiff Greenberg's interest in said property.
[71]

14.

The defendants except to the fourteenth Finding of Fact herein on the ground and for the reason that the same is not justified by the evidence.

15.

The defendants further request the Court to find that the plaintiff Greenberg is indebted to the defendants Stanley and Sallo in the sum of twelve

hundred (\$1200.00) dollars on account of assessment work; or, if the Court does not so find, then that the Kleary Creek Mining Company is indebted to them on account of assessment work in the sum of twenty-four hundred (\$2400.00) dollars.

16.

The defendants request the Court to find that the plaintiff Greenberg appropriated and turned over to Robinson, Magids & Company gold-dust belonging to the owners of the Star Association Claim, that the value of said gold-dust so appropriated and turned over was of the value of sixteen hundred twenty-nine and 94/100 (\$1629.94) dollars.

17.

The defendants request the Court to find that the plaintiff Greenberg received as royalty from the Oregon Claim gold-dust to the amount and value of thirteen hundred (\$1300.00) dollars.

18.

The defendants request the Court to find that the interests of Greenberg, Tyapay, Lesamis and Garbin, and the assigns of Lesamis and Garbin, in the Oregon Claim are equal, to wit, an undivided one-eighth each.

19.

The defendants request the Court to find that the defendants Tyapay, Lesamis and Garbin satisfied their contract with plaintiff Greenberg in the matter of the latter's interest in after-acquired [72] property by staking and locating an undivided one-eighth interest in the Oregon Claim in the name of said Greenberg, and that said Greenberg has no right,

title or interest to the undivided one-eighth located severally in the names of said Tyapay, Lesamis and Garbin.

20.

The defendants request the Court to find that the only agreement of partnership existing between the plaintiff and the defendants is the written agreement set forth in the plaintiff's complaint.

21.

The defendants request the Court to find that the claim and demand of Robinson, Magids & Company or the assignee Philip Murphy is now in litigation in an action in said court wherein said Philip Murphy is plaintiff and the Kleary Creek Mining Company is defendant, and that said action is still pending undetermined and continued until the opening of navigation in 1914.

22.

The defendants request the Court to find that in the expenses of the mining operations of the Kleary Creek Mining Company for the year 1910 there is an overcharge for groceries furnished in the sum of nine hundred thirty-three and 13/100 (\$933.13) dollars, which amount was to have been furnished by Greenberg without charge.

23.

The defendants further request the Court to find that in the item of expense for the year 1911 the sum of three hundred thirteen and 38/100 (\$313.38) dollars has been charged on monthly balances of Robinson, Magids & Company, and that no interest should be charged on running accounts except from

the date of the last item. [73]

24.

The defendants request that the Court find that the sum of eight hundred (\$800.00) dollars sought to be charged against the defendant Lesamis on account of gold-dust furnished Martin Moran should be charged equally to the defendants Lesamis, Tyapay and Garbin.

25.

The defendants request the Court to find that the mining copartnership known as the Kleary Creek Mining Company was a partnership organized without any definite term, was a partnership at will, and that the same was dissolved upon notice September 9th, 1910. [74]

The defendants above named except to the Conclusions of Law contained in paragraph one of said conclusions for the reasons that the same is contrary to law, and especially so much thereof as finds that the balance of the purchase price, to wit, said \$24,000.00, should be paid out of the proceeds of a sale of said mining claims; and the defendants request the Court to find that the balance of said \$24,000.00, to wit, the sum of \$19,914.15, is now due and owing from the plaintiff Greenberg to the defendants, and that said defendants have a lien upon the interest of said Greenberg in said mining claims for the payment thereof.

2.

The defendants except to the second Conclusion of Law herein for the reason that the same is contrary

to law, and for like reason to each and every part thereof.

3.

The defendants request the Court to find as a conclusion of law that in case of a sale of the mining claims mentioned in the complaint under any decree of the Court herein, that any, some, or all of the parties hereto may become bidders at said sale, and that in the event that said premises, or any part thereof, shall be bid in in the name of the defendants or either or any of them, then said defendant or defendants shall, as against the plaintiff Greenberg, be credited with any amount due from said Greenberg to him, or them on the amount bid over and above the expenses of litigation, and the debts of the Kleary Creek Mining Company, the same to be determined from the findings and decree herein. [75]

4.

The defendants request the Court to find that as a conclusion of law in case of a sale of said premises the amount realized on said sale, less the costs of this action and the expenses of sale, shall remain in the custody of the Court until the final determination of any action or actions pending on behalf of any of the creditors of the Kleary Creek Mining Company, and until the further order of the Court.

5.

The defendants request the Court to find that the defendants are entitled to judgment against the plaintiff Greenberg for the sum of nineteen thousand nine hundred fourteen and 15/100 dollars (\$19,914.-15), being the balance due for the one-quarter in-

terest in the premises described in the complaint, and that the defendants Stanley and Sallo have judgment against said Greenberg for the sum of twelve hundred (1200.00) dollars on account of assessment work performed by them upon the premises described in the complaint, and that the defendants have judgment against the plaintiff Greenberg for the sum of nine hundred thirty-three and 13/100 (933.13) dollars overcharge on account of groceries furnished prior to July, 1910.

6.

The defendants request the Court to find as a conclusion of law that the plaintiff Greenberg should pay to the partnership fund his share of the expenses for the year 1910 and 1911, amounting to the sum of fifty-nine hundred sixty-seven and 10/100 dollars (\$5,967.10) and over before any sale of the premises described in the complaint be made in view of the personal [76] indebtedness of said plaintiff to the defendants in furtherance of justice and in furtherance of the lien of the defendants for the purchase money agreed to be paid by said Greenberg and in reduction and liability of the defendants to the creditors of the Kleary Creek Mining Company.

G. J. LOMEN,

O. D. COCHRAN,

Attys. for Defts.

[Endorsed]: No. 2349. (Orig.) In the District Court for the District of Alaska, Second Division. H. Greenberg vs. Jack Lesamis et al. Defts. Exceptions to Findings, etc. Filed in the Office of the Clerk

of the District Court of Alaska, Second Division, at Nome. Oct. 28, 1913. John Sundback, Clerk. By J. A. B., Deputy. G. J. Lomen and O. D. Cochran, Attys. for Defts. [77]

*In the District Court for the District of Alaska,
Second Division.*

No. 2349.

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS, JOHN TYAPAY, ANDY
GARBIN, GEORGE STANLEY and SAM
SALLO,

Defendants.

Decree.

This cause came on regularly to be heard before the Court without a jury, on the 15th day of September, 1913, and the trial thereof continued from day to day until the 19th day of September, 1913, the plaintiff appearing in person and by his attorneys, Messrs. J. F. Hobbes and William A. Gilmore, and the defendants appearing in person and by their attorney, G. J. Lomen, Esq., and witnesses on behalf of the plaintiff and defendants having been sworn and testified, and documentary evidence and depositions on behalf of the parties hereto being read and introduced in evidence, and the Court having heard the arguments of counsel for the respective parties, and having taken the same under advisement, and having thereafter, on the 21st day of October, 1913,

filed its written opinion herein, finding for the plaintiff and against the defendants, and having heretofore on the 28 day of October, 1913, made and filed its findings of fact and conclusions of law herein, and being now fully advised in the premises, and upon motion of attorneys for plaintiff, it is hereby

ORDERED, ADJUDGED AND DECREED, that the plaintiff do have judgment as prayed for in his complaint herein, against the defendants and each of them; that the mining copartnership [78] between plaintiff and defendants named the Klery Creek Mining Company, be, and the same is hereby dissolved; that the plaintiff be, and he is hereby granted an accounting between the plaintiff and defendants of all and every matter and thing arising under and by virtue of the mining copartnership known as the Klery Creek Mining Company, in accordance with the findings of the Court, heretofore made, filed and entered; and it is further ORDERED, ADJUDGED AND DECREED, that all the assets of the said Klery Creek Mining Company consist of mining claims and personal property situated thereon, and therewith connected, hereinafter named; that under and by virtue of said accounting that said Klery Creek Mining Company is indebted to the Robinson-Magids & Company, or to Philip Murphy, its assignee in the sum of \$16,484.82, with legal interest from September 1st, 1911, to date, amounting to \$2,830.12, amounting in principal and interest in all, to the sum of \$19,314.94, and that of said indebtedness the defendant Jack Lesamis owes to the Klery Creek Mining Company the sum of

\$4,429.21; that the said defendant John Tyapay is indebted to the said Klery Creek Mining Company in the sum of \$4,703.21; and the said defendant, Andy Garbin, is indebted to the said Klery Creek Mining Company in the sum of \$4,215.40, and the plaintiff, H. Greenberg, is indebted to the said Klery Creek Mining Company in the sum of \$5,967.10; it is further ORDERED, ADJUDGED AND DECREED that the plaintiff, H. Greenberg, is entitled to have the assets of said copartnership sold and the proceeds applied to the payment of said indebtedness, said assets of said copartnership being the mining claims described in plaintiff's complaint, and in the findings of fact heretofore made and filed by the Court, together with the personal property thereon situated, said mining claims all situated and located in the Noatak-Kobuk Mining Precinct, District of Alaska, to wit:

Discovery Claim; One Above Discovery; Two Above [79] Discovery, Six Below Discovery, Fraction between Two and Three Above Discovery, Association Fraction between Discovery and Starr, California Association, L. L. Klery Creek, opposite Discovery, Butte Association, R. L. Klery Creek, opposite Discovery, Oregon Association (Bench and Creek) adjoining upper and Starr, and lower end of 1 and 2 Above Discovery, Bench Seven, opposite Creek Claim Seven Below, Gold Hill Association, R. L., opposite 1, 2, 3 and 4 creek claims, all the foregoing claims being situate on Klery Creek, or its benches; also Honey Claims, one and two, between Klery and Bear Creeks, Northpole Association L. L. adjoin-

ing claims last above described, One and Two Above Discovery on Bear Creek, Goldfield Association opposite 1 and 2 above and one below L. L. Bear Creek, Rich Association on Bear Creek, and adjoining 2 above Central Association, adjoining No. 1 below on Central Creek, Discovery on Central Creek, One Above on Central Creek, One Below on Central Creek, Fraction (Garbin) on Central Creek, Discovery Claim on Jack Creek, a tributary of Klery; all interest of said first party in all mining claims owned in whole or in part in Rocky Creek in said mining and recording district.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the defendants George Stanley and Sam Sallo are the trustees for the defendants Andy Garbin and Jack Lesamis, respectively, and that said defendants Stanley and Sallo, by the conveyances made to them, took and now hold the legal title to the property described in said conveyances in trust for said defendants Andy Garbin and Jack Lesamis, and subject to the said indebtedness of the said Klery Creek Mining Company.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the United States Marshal for the District of Alaska, Second Division, sell, the whole of said assets, both personal and real above described, under order and execution of the Court in [80] this action in the manner provided by law, and pay the proceeds of said sale to the clerk of the above-entitled court and that said clerk pay and distribute the said proceeds so received by him in the following manner:

1. The plaintiff's costs and expenses in this litigation.

2. The said indebtedness of the Klery Creek Mining Company to Robinson-Magids & Company or Philip Murphy, as assignee.

3. The balance of said proceeds if any, to the defendants or their assigns, to the amount of \$18,761.81.

4. The balance of said proceeds, if any, still remaining, to be distributed equally between the plaintiff and the defendants, Andy Garbin, Jack Lesamis, John Tyapay, or their assigns.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the plaintiff do have judgment and execution against the defendants and each of them, for his costs and disbursements in this action, taxed at the sum of \$141.95 dollars.

Done in open court this 28 day of October, 1913.

CORNELIUS D. MURANE,

District Judge.

Service of foregoing decree admitted by receipt of copy this 24th day of Oct., 1913.

G. J. LOMEN,

Of Attys. for Defs.

[Endorsed]: No. 2349. In the District Court for the District of Alaska, Second Division. H. Greenberg, Plaintiff, vs. Jack Lesamis et al., Defendants. Decree. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Oct. 28, 1913. John Sundback, Clerk. By J. A. B., Deputy. J. F. Hobbes and William A. Gilmore, Attorneys at Law, Nome, Alaska, Attorneys for

Plaintiff. J. D. 2, p. 218. Vol. 10, Orders and Judgments, p. 368. C. [81]

*In the District Court for the District of Alaska,
Second Division.*

No. —.

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS et al.,

Defendants.

**Defendants' Objections and Exceptions to
Judgment.**

Now come the defendants in the above-entitled action and object and except to the judgment and decree made, filed and entered herein on the 28th day of October, 1913, and to the whole thereof, on the grounds and for the reasons that said judgment is:

1. Not justified by the pleadings or issues in the case.

2. Not justified by the evidence.

3. Not justified by the findings.

4. Inequitable and contrary to law.

5. Inconsistent with the findings and inconsistent in itself.

6. Not complete and does not adjudicate all matters involved in the accounting between the parties.

7. It embraces and adjudicates matters not properly in issue.

G. J. LOMEN and

O. D. COCHRAN,

Attorneys for Defendants.

[Endorsed]: No. 2349. In the District Court for the District of Alaska, Second Division. H. Greenberg, Plaintiff, vs. Jack Lesamis et al., Defendants. Defendants' Objections and Exceptions to Judgment. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Oct. 28, 1913. John Sundback, Clerk. By J. A. B., Deputy. O. D. Cochran and G. J. Lomen, Attorneys for Defendants. [82]

*In the District Court for the District of Alaska,
Second Division.*

No. 2349.

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS, JOHN TYAPAY, ANDY GAR-
BIN, GEORGE STANLEY and SAM
SALO,

Defendants.

Writ of Execution.

The President of the United States of America, to
E. R. Jordan, United States Marshal for the
District of Alaska, Second Division, Greeting:

WHEREAS, on the 28th day of October, 1913, the
above-named plaintiff, H. Greenberg, recovered judg-
ment in the above-named court, against the above-
named defendants, Jack Lesamis, John Tyapay,
Andy Garbin, George Stanley and Sam Salo, which
said judgment is in the words and figures following,
to wit:

*“In the District Court for the District of Alaska,
Second Division.*

No. 2349.

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS, JOHN TYAPAY, ANDY
GARBIN, GEORGE STANLEY and SAM
SALLO,

Defendants.

DECREE. [83]

This cause came on regularly to be heard before the Court without a jury, on the 15th day of September, 1913, and the trial thereof continued from day to day until the 19th day of September, 1913, the plaintiff appearing in person and by his attorneys Messrs. J. F. Hobbes and William A. Gilmore, and the defendants appearing in person and by their attorney, G. J. Lomen, Esq., and witnesses on behalf of the plaintiff and defendants having been sworn and testified, and documentary evidence and depositions on behalf of the parties hereto being read and introduced in evidence, and the Court having heard the arguments of counsel for the respective parties, and having taken the same under advisement, and having thereafter, on the 21st day of October, 1913, filed its written opinion herein, finding for the plaintiff and against the defendants, and having heretofore on the 28 day of October, 1913, made and filed its findings of fact and conclusions of law herein,

and being now fully advised in the premises, and upon motion of attorneys for plaintiff, it is hereby

ORDERED, ADJUDGED AND DECREED, that the plaintiff do have judgment as prayed for in his complaint herein, against the defendants and each of them; that the mining copartnership between plaintiff and defendants named the Klery Creek Mining Company, be, and the same is hereby dissolved; that the plaintiff be, and he is hereby granted an accounting between the plaintiff and defendants of all and every matter and thing arising under and by virtue of the mining copartnership known as the Klery Creek Mining Company, in accordance with the findings of the Court, heretofore made, filed and entered; and it is further ORDERED, ADJUDGED AND [84] DECREED, that all the assets of the said Klery Creek Mining Company consist of mining claims and personal property situated thereon, and therewith connected, hereinafter named; that under and by virtue of said accounting that said Klery Creek Mining Company is indebted to the Robinson-Magids & Company, or to Philip Murphy, its assignee, in the sum of \$16,484.82, with legal interest from September 1st, 1911, to date, amounting to \$2,830.12, amounting in principal and interest in all, to the sum of \$19,314.94, and that of said indebtedness the defendant Jack Lesamis owes to the Klery Creek Mining Company the sum of \$4,429.21; that the said defendant John Tyapay is indebted to the said Klery Creek Mining Company in the sum of \$4,703.21; and the said defendant, Andy Garbin, is indebted to the said Klery Creek Mining Company

in the sum of \$4,215.40, and the plaintiff, H. Greenberg, is indebted to the said Klery Creek Mining Company in the sum of \$5,967.10; it is further ORDERED, ADJUDGED AND DECREED that the plaintiff, H. Greenberg, is entitled to have the assets of said copartnership sold and the proceeds applied to the payment of said indebtedness, said assets of said copartnership being the mining claims described in plaintiff's complaint, and in the findings of fact heretofore made and filed by the Court, together with the personal property thereon situated, said mining claims all situated and located in the Noatuk-Kobuk Mining Precinct, District of Alaska, to wit:

Discovery Claim; One Above Discovery; Two Above Discovery, Six Below Discovery, Fraction between Two and Three Above Discovery, Association Fraction between Discovery and Starr, California Association, L. L. Klery Creek, opposite Discovery, Butte Association, R. L. Klery Creek, opposite Discovery, Oregon Association (Bench and Creek) adjoining upper [85] and Starr, and lower end of 1 and 2 Above Discovery, Bench Seven, opposite Creek Claim Seven Below Gold Hill Association R. L. opposite 1, 2, 3 and 4 creek claims. All the foregoing claims being situate on Klery Creek, on its benches; also Honey Claims, one and two, between Klery and Bear Creeks, Northpole Association L. L. Adjoining claims last above described, One and Two Above Discovery on Bear Creek, Goldfield Association opposite 1 and 2 above and one below L. L. Bear Creek, Rich Association on Bear Creek, and

adjoining 2 above Central Association, adjoining No. 1 below on Central Creek, Discovery on Central Creek, One above on Central Creek, One Below on Central Creek, Fraction (Garbin) on Central Creek, Discovery Claim on Jack Creek, a tributary of Klery; all interest of said first party in all mining claims owned in whole or in part in Rocky Creek in said mining and recording district.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the defendants, George Stanley and Sam Sallo are the trustees for the defendants, Andy Garbin and Jack Lesamis, respectively, and that said defendants, Stanley and Sallo, by the conveyances made to them, took and now hold the legal title to the property described in said conveyances in trust for said defendants, Andy Garbin and Jack Lesamis, and subject to the said indebtedness of the said Klery Creek Mining Company.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the United States Marshal for the District of Alaska, Second Division, sell, the whole of said assets, both personal and real above described, under order and execution of the Court in this action in the manner provided by law, and pay the proceeds of said sale to the clerk of the above-entitled court and that said clerk pay and distribute the said proceeds so received by him in the following manner: [86]

1. The plaintiff's costs and expenses in this litigation.

2. The said indebtedness of the Klery Creek Mining Company to Robinson-Magids & Company or

Philip Murphy, as assignee.

3. The balance of said proceeds, if any, to the defendants or their assigns, to the amount of \$18,-761.81.

4. The balance of said proceeds, if any, still remaining, to be distributed equally between the plaintiff and the defendants, Andy Garbin, Jack Lesamis, John Tyapay, or their assigns.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the plaintiff do have judgment and execution against the defendants, and each of them, for his costs and disbursements in this action, taxed at the sum of \$141.95 dollars.

Done in open court this 28 day of October, 1913.

CORNELIUS D. MURANE,

District Judge.

Service of the foregoing decree admitted by receipt of copy this 24th day of Oct. 1913.

G. J. LOMEN,

Of Attys. for Defs.

[Endorsed]: No. 2349. In the District Court for the District of Alaska, Second Division. H. Greenberg, Plaintiff, vs. Jack Lesamis et al., Defendants. Decree. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Oct. 28, 1913. John Sundback, Clerk. By J. A. B., Deputy. J. F. Hobbes and William A. Gilmore, Attorneys at Law, Nome, Alaska, Attorneys for Plaintiff. J. D. 2, p. 218. Vol. 10, Orders and Judgments, p. 368. C.” [87]

Which said judgment has been duly docketed, as appears to us of record. And

WHEREAS, the said sum of \$141.95, together with interest at the rate of 8% per annum from October 27th, 1913, and costs and accruing costs, is now at the date of this writ actually due to said plaintiff on said judgment, for his costs herein; and

WHEREAS, the said sum of \$19,314.94, together with legal interest from October 27th, 1913, is now at the date of this writ actually due to the said Robinson, Magids & Co., or to Philip Murphy, its assignee, on said judgment; and

WHEREAS, in and by said judgment it is by the Court ordered and adjudged that certain real and personal property, particularly described and set forth in said judgment, be sold to satisfy said judgment in accordance with the terms thereof:

NOW, THEREFORE, You are hereby required to sell all the said real and personal property described in said judgment, and apply the proceeds as directed by said judgment, costs, accruing costs and expenses of executing this writ.

You are ordered to make return of this writ within sixty days after its receipt by you, with what you have done endorsed thereon.

WITNESS the Honorable J. R. TUCKER, Judge of the District Court for the District of Alaska, Second Division, and the seal of the said court affixed hereto, at Nome, Alaska, this 4th day of April, 1914.

[Court Seal]

J. SUNDBACK.

Clerk of the District Court for the District of Alaska, Second Division.

By J. Allison Bruner,

Deputy Clerk. [88]

United States of America,
District of *America*,
Second Division,—ss.

I hereby certify that on April 4th, 1914, at Nome, Alaska, I received the annexed Writ of Execution, and thereafter, on the 23d day of April, 1914, I executed the same by advertising, according to law, the sale of all the right, title, and interest of the defendants in the action herein, in and to those certain placer mining claims, all lying and being situate in the Noatak-Kobuk Mining Precinct District of Alaska, and more particularly described as follows; those certain mining claims known and designated respectively as,

Discovery Claim; One Above Discovery; Two Above Discovery; Six Below Discovery; Fraction between Two and Three Above Discovery; Association Fraction between Discovery and Starr, California Association; L. L. Klery Creek, opposite Discovery; Butte Association; R. L. Klery Creek, opposite Discovery; Oregon Association (Bench and Creek) adjoining upper and Starr, and lower end of 1 and 2 Above Discovery; Bench Seven, opposite Creek Claim Seven Below; Gold Hill Association, R. L., opposite 1, 2, 3 and 4 creek claims; all the foregoing claims being situate on Klery Creek, or its benches; also Honey Claims, one and two, between Klery and Bear Creeks, Northpole Association L. L. adjoining claims last above described; One and Two Above Discovery on

Bear Creek; Goldfield Association, opposite 1 and 2 Above and one Below; L. L. Bear Creek; Rich Association on Bear Creek, and adjoining 2 Above Central Association, adjoining No. 1 Below on Central Creek, Discovery on Central Creek, One Above on Central Creek, One Below on Central Creek, Fraction (Garbin) on Central Creek; Discovery Claim on Jack Creek, a tributary of Klery; all interest of said first party in all mining claims owned in whole or in part in Rocky Creek in said mining and recording district,

by posting a printed notice of the time and place of sale in three public places within five miles of the place of sale four weeks prior to the date of sale, particularly describing said property, one of said notices being posted on the door of the postoffice at Nome, Alaska, and by causing to be published once a week for the same period, on five consecutive week intervening days in the "Nome Daily Nugget," a newspaper of general circulation nearest the place of [89] sale, a like notice, a copy of which, with affidavit of publication, is hereto attached and made a part hereof.

And thereafter on the 29th day of May, 1914, by order of the District Court, I postponed the sale by public proclamation to June 29th, 1914.

And thereafter on the 29th day of June, 1914, by further order of the District Court I postponed the sale by public proclamation for five weeks to August 3d, 1914.

And thereafter on the 3d day of August, 1914, for good and sufficient reasons, I postponed the sale by public proclamation to August 10th, 1914.

And thereafter on the 10th day of August, 1914, at twelve o'clock noon of said day, at the front door of the U. S. Courthouse, at Nome, Alaska, I did offer for sale at public vendue the above-mentioned and described property in separate lots and parcels, and received no bids for same, and I thereupon offered said property and sold the same in one lot and parcel to H. Greenberg, plaintiff herein, for the sum of Three Thousand Dollars, said bid being the highest and best bid received by me.

Returned this 11th day of August, 1914.

E. R. JORDAN,

United States Marshal.

By Elmer Reed,

Deputy.

MARSHAL'S COSTS.

1	Service.....	\$ 6.00
3½%	Commission on \$ 459	16.07
2 %	“ “ 2,500	50.00
	Advertising.....	35.00
		<hr/>
		\$107.07

[90]

I HEREBY CERTIFY That I received the annexed Writ of Execution on the 15th day of May, 1914, and thereafter on the 12th day of June, 1914, I did advertise according to law, by posting in three conspicuous places within five miles of the place of sale, and one on the door of the postoffice at Kiana,

Alaska, three notices of sale; a copy of which is annexed hereto and made a part hereof, that I would on the 22d day of June, 1914, at 2 P. M., at the property on Klery Creek, sell at public vendue to the highest and best bidder for cash, all of the right, title and interest of the defendants in and to the following described personal property:

1 portable, canvas covered house, on runners.

1 large iron Vise, No. 88.

1 large Steel Range.

2 large Augers.

And thereafter on the 22d day of June, I did, for good and sufficient reason, postpone said sale until June 26th, 1914, at 2 P. M. And on said latter date I did offer the above-described personal property for sale and sold the same to THOMAS BALDWIN for the sum of Forty-one (\$41.00) Dollars, that being the highest and best bid received.

I return herewith \$17.13, being the amount collected on Execution, less Marshal's costs on this Writ, amounting to \$23.87.

Dated at Kiana, Alaska, June 27th, 1914.

E. R. JORDAN,
United States Marshal.

By C. H. Hawkins,
Deputy.

MARSHAL'S COSTS:

1 service Execution.....	\$ 6.00
Boat fare	7.00
Meals & lodging.....	8.00
	<hr/>
	\$21.00
Commission on sale, at 7%	2.87
	<hr/>
Total exp.	\$23.87

[91]

COPY.

NOTICE OF MARSHAL'S SALE.

PUBLIC NOTICE IS HEREBY GIVEN, that by virtue of a Writ of Execution dated April 4th, 1914, issued out of the District Court for the District of Alaska, Second Division, on a judgment rendered in said Court in the action of H. GREENBERG, Plaintiff, vs. JACK LESAMIS, JOHN TYAPAY, ANDY GARBIN, GEORGE STANLEY, and SAM SALO, Defendants, and in favor of said Plaintiff, and against said Defendants, I will offer for sale at Public vendue to the highest and best bidder for cash, on the 22nd day of June, 1914, at 2 P. M., at the property on Klery Creek, all of the right, title and interest of the defendants in and to the following described personal property:

- 1 portable, canvas covered house, on runners.
- 1 large iron Vise, No. 88.
- 1 large steel range.
- 2 large Augers..

Dated at Kiana, Alaska, June 11th, 1914.

E. R. JORDAN,
United States Marshal.

By C. H. Hawkins,
Deputy. [92]

AFFIDAVIT OF PUBLICATION.

United States of America,
District of Alaska.

I, E. C. Divine, first being duly sworn, depose and say, that I am the manager of the "Nome Daily Nugget," a daily newspaper published in Nome, Alaska, and that the annexed notice was published in said newspaper once each and every week for six consecutive weeks, said publications being made on April 23d and 30th and on May 7th, 14th, 21st, 28th, 1914.

E. C. DIVINE.

Subscribed and sworn to before me this 28 day of May, 1914.

[Notarial Seal]

O. D. COCHRAN,

Notary Public in and for the District of Alaska.

My Commission Expires Aug. 2, 1915. [93]

NOTICE OF MARSHAL'S SALE.

Public notice is hereby given that by virtue of an order of sale and writ of execution dated the 4th day of April, 1914, issued out of the District Court for the Second Division, District of Alaska, on a judgment and decree rendered in said court on the 28th day of October, 1913, in favor of H. Greenberg and against Jack Lesamis, John Tyapay, Andy Garbin, George Stanley and Sam Salo, I will offer

for sale and sell at public vendue to highest and best bidder for cash, on the 29th day of May, 1914, at the front door of the U. S. Courthouse, Nome, Alaska, at 12 o'clock noon, all of the right, title and interest of the mining copartnership, known as and operating under the name of the Klery Creek Mining Company in and to those certain placer mining claims lying and being in the Noatak-Kobuk Mining Precinct, District of Alaska, to wit:

Discovery Claim; One Above Discovery; Two Above Discovery, Six Below Discovery, Fraction between Two and Three Above Discovery, Association Fraction between Discovery and Starr, California Association, L. L. Klery Creek, opposite Discovery, Butte Association, R. L. Klery Creek, opposite Discovery, Oregon Association (Bench and Creek) adjoining upper and Starr, and lower end of 1 and 2 Above Discovery, Bench Seven, opposite creek claim Seven Below, Gold Hill Association, R. L., opposite 1, 2, 3 and 4 creek claims; all the foregoing claims being situate on Klery Creek, or its benches; also Honey Claims, one and two, between Klery and Bear Creeks, Northpole Association L. L. adjoining claims last above described, One and Two Above Discovery on Bear Creek, Goldfield Association, opposite 1 and 2 above and one below L. L. Bear Creek, Rich Association on Bear Creek, and adjoining 2 above Central Association, adjoining No. 1 below on Central Creek, Discovery on Central Creek, One above on Central Creek, One below on Central Creek, Fraction (Garbin) on Central Creek, Discovery Claim on Jack Creek, a tributary of

Klery and all of the right, title and [94] interest of the said mining copartnership the Klery Creek Mining Co. in and to any and all mining claims lying, being and situated in whole or in part on Rocky Creek in the Noatak-Kobuk Mining Precinct, District of Alaska.

Dated at Nome, Alaska, April 23d, 1914.

E. R. JORDAN,

United States Marshal, Second Division, District of Alaska.

[Endorsed]: No. 2349. District Court for the District of Alaska, Second Division. H. Greenberg, Plaintiff, vs. Jack Lesamis et al., Defendants. Execution. Received 4th day of April, 1914. May 29. Sale Postponed to June 5th, 12, 19, 26, 29. Postponed to Aug. 3rd by Minute Order of the Court of June 20, 1914. J. F. Hobbes and W. A. Gilmore, Attorneys for Plaintiff. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Aug. 11, 1914. G. A. Adams, Clerk. By ———, Deputy. L. [95]

**[Order Relative to Motion for Extension of Time to
File Bill of Exceptions, etc.]**

*In the District Court for the District of Alaska,
Second Division.*

TERM MINUTES, General 1913 Term, beginning
January 6, 1913.

Saturday, November 1, 1913, at 10 A. M.

Court convened pursuant to adjournment. Hon.

CORNELIUS D. MURANE, District Judge, presiding.

Upon the convening of Court the following proceedings were had:

2349.

H. GREENBERG

vs.

JACK LESAMIS et al.

Mr. G. J. Lomen, on behalf of defendants, presented and filed motion for order granting twenty days' additional time to file bill of exceptions for use on hearing of motion for new trial; also affidavit in support of said motion.

Mr. Lomen also presented and filed motion for the continuance of the hearing of the motion for a new trial herein for the period of three weeks.

The Court announced that he would take up said motions at the time of hearing the motion for new trial.

**[Order Overruling Motion for Extension of Time to
File Bill of Exceptions, etc.]**

2349.

GREENBERG

vs.

LESAMIS et al.

Mr. G. J. Lomen presented and filed objections to the hearing of defendants' motion for a new trial herein at the present time. The motion being submitted was overruled by the Court. The motion of defendants for twenty days' additional time in which

to prepare, serve and file a proposed bill of exceptions which may be used on the hearing of the motion for a new trial herein being submitted, the Court overruled and denied said motion. Exception to order allowed.

The motion of defendants for a continuance of the hearing of the motion for a new trial herein for a period of three weeks being submitted to the Court, was overruled and denied. Exception to order allowed.

The motion of defendants for a new trial being submitted to the Court, the Court overruled and denied said motion for a new trial. An exception was allowed defendants to said order. Upon motion of Mr. Lomen, defendants were allowed twenty days from to-day in which to prepare, serve and file a bill of exceptions herein. [96]

**[Order Overruling and Denying Motion for an Order
Vacating Certain Orders Made November 1,
1913.]**

*In the District Court for the District of Alaska,
Second Division.*

TERM MINUTES, General 1914 Term, beginning
January 5, 1914.

Saturday, February 14, 1914, at 11 A. M.

Court convened pursuant to adjournment. Hon.
J. R. TUCKER, District Judge, presiding.

Upon the convening of Court the following proceedings were had:

2349.

GREENBERG

vs.

LESAMIS et al.

Defendants' motion for an order vacating and setting aside those certain orders made by the Court on the 1st day of November, 1913, denying defendants' motion for a continuance of the hearing of the motion for a new trial filed in this action; and to vacate and set aside the order of the Court denying defendants' motion for a new trial herein; and to reinstate and revive the said defendants' motion for a new trial filed in this action; and vacating the findings and judgment in this action; and for a new trial herein, was taken up by the Court who announced that the matters presented in said motion having been argued and presented on plaintiff's motion to strike out certain portions of defendants' said motion and being convinced that defendants' said second motion for a new trial, etc., was without merit, he would overrule and deny the same.

Opinion filed. [97]

*In the District Court for the District of Alaska,
Second Division.*

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS et al.,

Defendants.

Opinion.

The Court is asked to reopen this case on a second motion for a new trial, but I can see no justification for doing so. Section 1057, nor any other section of the Alaska law, provides for no such second motion, and section 925 has no application to this case.

In the case of *Kentucky Central R. Co. vs. Smith*, 18 L. R. A., page 67, and *Lookabaugh vs. Cooper*, 48 Pac. 99, this question is discussed and decided with reference to a statute similar to Section 1057, and I think the decisions in those cases lay down the correct rule or doctrine. I do not mean to say that there are no circumstances in which this court would reopen a case on a second motion, but this is not one of them.

The first and third grounds for the motion were disposed of by (1) the decision in the *Hummel* case, recently decided, and (2) by the affidavit of Mr. Hobbes, with reference to the stenographer. With reference to the second ground, and the alleged wrong or injustice upon which the defendants mainly base the second motion, namely, that [98] Judge Murane failed or refused to hear argument on the original motion, that there is no such thing as a *pro forma* decision on motion for new trial, and that it is the duty of the Court to hear argument thereon and to weigh or re-weigh the evidence in the case, etc., defendants cite the cases reported in 74 Fed. 477 and 176 Fed. 529. It is difficult to see how these cases have any bearing on the case at bar; they simply reiterate the familiar rule as to the weight

of evidence with reference to the verdict of a jury and the province of the Court *quoad* the same. I can find nowhere in the decisions that it is held that the Court must hear argument on a motion for a new trial. It may be better for the Court to do so, especially in jury cases where the evidence is adduced more particularly before and for the benefit of the jury whose particular province is to pass on the facts; in such cases it would be wiser and better for the Court to have its attention brought particularly to the evidence by argument on a motion to set aside the verdict.

In the case at bar, however, the trial was solely before the Judge, without a jury; it was a case in equity, and while there was a mass of evidence, it may reasonably be inferred that the judge had it well in mind; the trial lasted several days, and doubtless the case was elaborately and ably argued; the Judge took ample time to consider the case, for he did not render his decision until October 28th, about ten days after the trial.

Having reached the conclusion, therefore, that the second motion for a new trial should be overruled, it is unnecessary to pass on the questions raised on the motion "to [99] strike." Counsel for the defendants suggest, however, that the hearing of argument on that motion resulted in an injustice to the defence, in that it gave the plaintiff the opening and conclusion of the argument on the second motion for a new trial. But the Court is satisfied that the defence has suffered no harm therefrom. The oral and written arguments already had, and

the authorities examined since the same was filed has sufficiently advised the Court upon the facts and the law, and it would be a waste of time to hear the case further.

Dated at Nome, Alaska, February, 14th, 1914.

J. R. TUCKER,

District Judge.

[Endorsed]: No. 2349. In the District Court for the District of Alaska, Second Division. H. Greenberg, Plaintiff, vs. Jack Lesamis et al., Defendants. Opinion. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Feb. 14, 1914. John Sundback, Clerk. By J. A. B., Deputy. [100]

*In the District Court for the District of Alaska,
Second Division.*

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS, JOHN TYAPAY, ANDY GARBIN, GEORGE STANLEY and SAM SALLO,
Defendants.

Motion [for Order Quashing Execution].

Comes now the defendants above named, and move the Court for an order quashing the execution and notice of sale of the premises described in the judgment herein, and that if the same be not quashed, then that the Court make and enter an order herein postponing the sale of said premises from the 29th day of May, 1914, and for one year thereafter, or

for ten days after the filing of the mandate of the Circuit Court of Appeals for the Ninth Circuit, on the appeal to be taken herein, if said mandate shall be filed within one year.

And the said defendants further move that the said Court issue an order herein requiring said plaintiff to show cause at such time and place as to said Court shall seem just and proper, why said sale should not be quashed or postponed as aforesaid, and that in case said motion to quash or postpone should not be heard and disposed of before the 29th day of May, 1914, then that said sale be in the meantime and until the determination of said motion, postponed [101] and that service of a copy of any order or orders herein upon the said marshal shall operate as a postponement of said sale.

This motion is based upon the records and files in the above-entitled action and on the affidavit of G. J. Lomen hereto attached.

O. D. COCHRAN,
G. J. LOMEN,
Attorneys for Defendants. [102]

*In the District Court for the District of Alaska,
Second Division.*

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS, JOHN TYAPAY, ANDY GARBIN,
GEORGE STANLEY and SAM SALLO,

Defendants.

Affidavit of G. J. Lomen.

United States of America,
District of Alaska,—ss.

G. J. Lomen, being first duly sworn, says:

That he is one of the attorneys for the defendants above named; that said defendants, with the exception of George L. Stanley, are absent from the city of Nome where affiant resides and more than one hundred and fifty miles distant from Nome.

That said defendants are about to take an appeal from the judgment made and entered herein, on the 28th day of October, 1913; that more than sixty days exclusive of Sundays have elapsed since the entry of said judgment. That on the 4th day of April, 1914, a pretended execution on said judgment was issued by the Clerk of said Court and delivered by plaintiff to the United States marshal for the District of Alaska, Second Division, commanding said marshal to sell all [103] of the property described in the complaint in said action, in accordance with said judgment; that said marshal has given notice of such sale to be had at the front door of the courthouse in Nome, Alaska, on the 29th day of May, 1914, and will, unless otherwise directed by the order of this court, sell said premises. That said sale if made, will be absolute and not subject to redemption.

That Robinson, Magids & Company, a copartnership, or the assignee of said partnership one Philip Murphey, are by the judgment of said court aforesaid made preferred creditors. That prior to the en-

try of the judgment aforesaid, said Philip Murphey commenced an action at law to recover judgment against the Klery Creek Mining Company naming the plaintiff and defendants herein as copartners in said Company for the sum of seventeen thousand one hundred and twenty-four dollars and interest and costs, and caused to be issued and levied a writ of attachment against a part of the premises described in the complaint herein. That said action is still pending and undetermined and said attachment, unless discharged by the judgment aforesaid and herein, is still in force.

That said judgment leaves it in doubt whether the sale aforesaid is subject to or discharged of the lien of said attachment or other liens.

That said Philip Murphey is not a party to the action herein, and is not entitled to a personal judgment herein or a preference herein.

That said judgment takes no notice of other or general creditors of said Klery Creek Mining Company, or any preference to which they might be entitled, although the Court found that the defendants Stanley and Sallo were [104] entitled to a credit for and on account of assessment work performed upon said premises to the extent of twenty-four hundred dollars. That no notice of the dissolution or winding up of said partnership was given to creditors; that no receiver has been appointed, nor has the said property been taken into custody by the Court, except by said attachment.

That among the questions to be presented on the appeal herein is the question of whether the indebted-

edness found to be due to Robinson, Magids & Company, or their assignee, is due from the plaintiff herein or from the Klery Creek Mining Company; also whether the balance of twenty-four thousand dollars, to wit, eighteen thousand seven hundred sixty-one and eighty-one hundredths dollars mentioned in said judgment is due from the plaintiff herein or from the partnership estate belonging to said Klery Creek Mining Company.

That if said sale be not postponed pending said appeal the said defendants will suffer irreparable loss and injury, and will lose the benefit of their said appeal and the benefit of a reversal of said judgment would be rendered nugatory; or, if a reversal of said judgment by the Circuit Court of Appeals would have the effect of annulling and setting aside said sale such result would be disastrous to the purchaser at such sale.

Again, if said sale take place and is final, the attachment lien of Philip Murphey will be gone, and whether gone or not, the judgment of this court herein is not binding upon said Philip Murphey who is not a party to this action.

That by reason of the premises said property cannot, until the determination of said appeal, be sold at its real or full value.

That by reason of the lapse of time since said judgment was entered, it is doubtful whether a superseas [105] bond herein would prevent said sale.

Further affiant says that no order for the sale of said premises has been made or entered herein, and

no levy made by said marshal upon said property or any part thereof.

That this affidavit is made for the purpose of securing an order of this Court quashing said execution and notice of sale thereunder, and that if the same be not quashed, then that the Court make and enter an order herein postponing the sale of said premises by said marshal until a reasonable time after the filing of the mandate of the said Circuit Court of Appeals on the appeal herein.

G. J. LOMEN.

Subscribed and sworn to before me this the 20th day of May, 1914.

[Notarial Seal]

O. D. COCHRAN,

Notary Public in and for the District of Alaska.

My commission expires on the 2d day of August, 1915. [106]

Now comes the plaintiff and appears on the hearing of the motion herein, and waives order to show cause at this time or other notice and agrees that an order be made and entered postponing said sale for 30 days and until the further order of the Court on the motion herein a more formal order to be prepared and signed by the Court herein fixing date of hearing of motion June 27, 1914.

Dated May 23, 1914.

J. F. HOBBS,

Of Attys. for Plff.

[Endorsed]: No. 2349. In the District Court for the District of Alaska, Second Division. H. Greenberg, Plaintiff, vs. Jack Lesamis et al., Defendants.

Motion and Affidavit and Stipulation. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. May 23, 1914. John Sundback, Clerk. By J. A. B., Deputy. G. J. Lomen and O. D. Cochran, Attorneys for Defendants.
[107]

*In the District Court for the District of Alaska,
Second Division.*

No. 2349.

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS et al.,

Defendants.

Opinion [on Motion to Quash Execution, etc.].

This is a dual motion (1) to quash the execution and notice of sale in the above-entitled cause, and (2) to postpone the sale of the premises or property in the proceedings mentioned from the 29th day of May, 1914, and for one year thereafter, or for ten days after the filing of the mandate of the Circuit Court of Appeals for the Ninth Circuit, on the appeal taken herein.

As to the first proposition, it appears to the Court that counsel for defendants fail to distinguish between a proceeding at law and a proceeding in equity. The motion to quash the execution, etc., is substantially to set aside the order of sale and to grant a new trial in the case, all of which was disposed of by the Court in its opinion heretofore filed. It is true

as contended for, and with reference to Mr. Freeman's work on Executions, that a motion to quash the execution may be made at any time, but this ordinarily contemplates the issuance of an execution and the levying of same in compliance with the statutory provisions and a sale as the result thereof, but this is a suit in equity, and the Court has pronounced its judgment in the case and as a result of that judgment has ordered a sale of certain property; the sale, therefore, is based upon the order of the Court and not upon the execution as provided by the statute, and before the Court can now stop the sale it must set [108] aside the order of sale, which as I have said, it has refused to do in denying the motion for a new trial.

The second part of the motion is to postpone the sale, and is in effect an attempt of the defendants to have the benefit of the writ of supersedeas which they failed to secure within sixty days, etc., after the rendition of the judgment by not complying with Section 1007 of the R. S. U. S.

The case mainly relied upon by defendants in support of their motion is *Bound v. South Carolina*, 55 Fed. 186, but that was a case in the Appellate Court, the appeal had been allowed and was pending; it was decided that the Appellate Court could postpone a sale till after the hearing and determination of the appeal although there had been no supersedeas. The sale was postponed for the period of eight months merely to await the determination of the appeal then pending. It may be well to note, however, that the court in that case, at page 188, said: "It is manifest

that if this postponement is to operate as a supersedeas, it could not be granted.” The case here is essentially and radically different from that of *Bound v. South Carolina*. This Court is now asked to postpone a sale contingent upon an appeal being obtained and for a period of twelve months from the rendition of the judgment. I have searched in vain for authority or justification for granting the motion to postpone, more so than probably would otherwise have been done but for the zeal of counsel and the insistence that my predecessor, in consequence of his hasty retirement from office, had inadvertently done the defendants an injustice. But to grant this motion would be to nullify Section 1007, R. S. U. S., or tantamount to making a *nunc pro tunc* order effectual for the purpose of a supersedeas. Such an order would operate as a supersedeas.

In the case of *Sage et al. vs. Central R. R. Co. et al.*, 93 U. S. p. 417 (decided in 1876), the Court said: “A supersedeas is a statutory remedy. It is only obtained by a strict compliance with [109] all the required conditions, none of which can be dispensed with. *Hogan vs. Ross*, 11 How. 297; *Railroad vs. Harris*, 7 Wall. 575. Time is an essential element in the proceeding, and one which neither the Court, nor the Judges, can disregard. If a delay beyond the limited time occurs, the right to the remedy is gone, and the successful party holds his judgment or decree freed and discharged from this means of staying proceedings for its collection or enforcement. This is a right which he has acquired, and of which he cannot be deprived without due process of law.

The Court can no more give effect to a supersedeas by ordering that the appeal shall relate back to a time within the sixty days, than it can to an appeal taken after the expiration of two years by dating it back to a time within the limitation. To make a *nunc pro tunc* order effectual for such purposes, it must appear that the delay was the act of the court and not of the parties, and that injustice will not be done.”

In the same volume of the Supreme Court Reports, at page 86 (decided in 1876), in *Kitchen vs. Randolph*, it was held that it was not in the power of a justice of the Supreme Court to grant a supersedeas on a writ of error or upon an appeal, unless the writ of error was sued out and served or the appeal taken within sixty days, Sundays exclusive, after the rendition of the judgment or decree complained of; and in that very case, p. 188, the Court, while granting the motion as above stated, said: “It is manifest, that if this postponement is to operate as a supersedeas, it could not be granted. The supersedeas is a right secured by statute, and of imperative obligation on the Court, and its officers. If the provisions of the statute are complied with, the right exists. If these are not complied with, it cannot exist. Without such compliance no court can confer it.”

The opinion of the Supreme Court in *Kitchen vs. Randolph*, *supra*, containing as it does a valuable historical review of the [110] law pertaining to the general subject on which this motion is based, seems to absolutely preclude this court from granting said motion; that opinion states that Section 1007

of the Revised Statutes expresses the intention of Congress to restore the policy of the old law, which had been relaxed by the former statute 1872, and the later opinion of the same eminent judge in *Sage vs. Railroad*, *supra*, states with force the rule of necessity of strict compliance with the statute. *New England R. Co. vs. Hyde*, 101 Fed. 398, &c.

As specially applicable to this case and the refusal of this court to grant the motion asked for, I quote from the opinion of Chief Justice Taney, the only rival of Chief Justice Marshall in that exalted position; he says: "This Court has never deemed the tribunals of the United States authorized to dispense with the express provisions of the Acts of Congress regulating appeals and writs of error on any equitable ground. No such power is given them by law." *Saltmarsh vs. Tuthill*, 12 How. 389. And again in *U. S. vs. Curry*, 6 How. 113, C. J. Taney says: "It has been said that this objection is a mere technicality, and may be regarded rather as a matter of form than of substance. But this Court does not feel itself authorized to treat the directions of an Act of Congress as it might treat a technical difficulty growing out of ancient rules of the common law. The power to hear and determine a case like this is conferred upon the Court by Acts of Congress, and the same authority which gives the jurisdiction has pointed out the manner in which the case shall be brought before us; and we have no power to dispense with any of these provisions, nor to change or modify them. And if the mode prescribed for removing cases by writ of error or appeal be too strict and

technical, and likely to produce inconvenience or injustice, it is for Congress to provide a remedy, by altering the existing laws, not for the Court.” For a full discussion and review of the authorities on [111] this subject, see Foster Federal Practice (4th ed.), Vol. 3, Section 510, p. 2085, et seq.

For these reasons, the motion to quash and the motion to postpone are denied.

J. R. TUCKER,

District Judge.

Dated at Nome, Alaska, July 24, 1914.

[Endorsed]: No. 2349. In the District Court for the District of Alaska, Second Division. H. Greenberg, Plaintiff, vs. Jack Lesamis et al., Defendants. Opinion. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Jul. 24, 1914. G. A. Adams, Clerk. By J. A. B., Deputy. [112]

*In the District Court for the District of Alaska,
Second Division.*

No. 2349.

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS, JOHN TYAPAY, ANDY GARBIN, GEO. L. STANLEY and SAM SALO,
Defendants.

Motion for Confirmation of Sale.

Comes now the above-named plaintiff by Messrs. J. F. Hobbes and William A. Gilmore, his attorneys,

and upon the records, pleadings and files herein, and the return of the U. S. Marshal to the order and decree of sale, showing to the Court that on the 10th day of August, 1914, the said marshal sold by auction in the manner prescribed by law, and according to the decree and practice of this Court, all the real property of the Klery Creek Mining Company, a co-partnership comprising the plaintiff and defendants, and described in said decree; and that notice of such sale was duly given as required by law and the return of such sale was made during the same special term, to wit: 'On the 11th day of August, 1914, moves the Court for an order herein confirming said sale.

Dated at Nome, Alaska, August 28th, 1914.

J. F. HOBBS and

WILLIAM A. GILMORE,

Attorneys for Plaintiff. [113]

Service of a copy of the foregoing motion for confirmation of sale this 29th day of August, 1914, at — M., admitted.

G. J. LOMEN,

Of Attorneys for Defendants.

[Endorsed]: No. 2349. In the District Court for the District of Alaska, Second Division. H. Greenberg, Plaintiff, vs. Jack Lesamis, et al., Defendants. Motion for Confirmation of Sale. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Aug. 29, 1914. G. A. Adams, Clerk. By ———, Deputy. J. F. Hobbes and William A. Gilmore, Attorneys at Law, Nome, Alaska, Attorneys for Plaintiff. [114]

[Objections of Defendant to Confirmation of Sale.]

*In the District Court for the District of Alaska,
Second Division.*

No. —.

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS et al.,

Defendants.

Come now the defendants in the above-entitled action, and object to the confirmation of the sale made by the United States Marshal of the premises described in the complaint in said action, under the pretended execution issued out of said court in said action on the 4th day of April, 1914, on the judgment entered in said action October 28th, 1913; which pretended sale took place on the 10th day of August, 1914, at twelve o'clock M., return of said execution being made by said marshal on the 11th day of August, 1914, for the reasons and on the ground following, to wit:

First: No order of sale was made by said Court as required by the judgment in said action.

Second: The pretended execution under which said sale was made, is void on its face and unauthorized by statute.

Third: No levy was made upon the property sold.
[115]

Fourth: The judgment in said action is so indefinite and uncertain as to render the execution thereof impossible.

Fifth: Said property was sold in bulk as one parcel, without reference to the attachment lien thereon, and without being freed from said attachment lien in favor of one Philip Murphey in an action pending in said court wherein said Philip Murphey was plaintiff and said H. Greenberg and the defendants herein were defendants.

Sixth: Said property at said sale, was bid in and struck off to H. Greenberg a judgment debtor in said action first above entitled, on a pretended bid of three thousand dollars, but that no money was in fact paid by said Greenberg to said marshal, except the sum of one hundred and seven dollars and seven cents, the costs of sale. That no money was paid to the clerk of said Court by said marshal as directed by the judgment in said action.

Dated at Nome, Alaska, this the 12th day of August, 1914.

G. J. LOMEN,

O. D. COCHRAN,

Attorneys for Defendants.

[Endorsed]: #2349. In the District Court for the District of Alaska, Second Division. H. Greenberg, Plaintiff, vs. Jack Lesamis et al., Defendants. Objections to Confirmation of Sale. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Aug. 13, 1914. G. A. Adams, Clerk. By —————, Deputy. L. G. J. Lomen and O. D. Cochran, Attorneys for Defendants. [116]

*In the District Court for the District of Alaska,
Second Division.*

No. 2349.

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS, JOHN TYAPAY, ANDY GARBIN,
GEO. L. STANLEY, and SAM SALO,
Defendants.

Order Confirming Marshal's Sale.

The motion of the plaintiff for an order confirming the sale of the real property of the Klery Creek Mining Company, a copartnership comprising plaintiff and defendants, made by the U. S. Marshal for the District of Alaska, Second Division, on the 10th day of August, 1914, pursuant to the decree and order of the Court herein, heretofore signed and filed, coming on regularly to be heard, and it appearing that notice of such sale was duly given as required by law, and that the said sale was in all respects duly and regularly made, according to law and the practices of this Court; and it appearing further that the said decree and order of sale were duly returned into court at the same term hereof, to wit, on the 11th day of August, 1914; and it appearing further to the Court that thereafter on the 13th day of August, 1914, the defendants filed their objections to the confirmation of said Marshal's sale, and the Court having considered said objections and having overruled the same, and the Court having been otherwise fully advised in all the premises; [117]

It is therefore, now ORDERED AND ADJUDGED that the said sale of all the real property of the said Klery Creek Mining Company, comprising the plaintiff and defendants, as described in the said decree and order heretofore entered herein, be, and the same hereby is in all respects confirmed and approved;

And it is further ORDERED AND ADJUDGED that the said H. Greenberg, purchaser of the said real property, be let into possession thereof forthwith, and if redemption thereof be not made within the time limited by law, then at the expiration of said time of redemption, the said U. S. marshal for the District of Alaska, Second Division, execute and deliver to the said purchaser a conveyance of all the said real property.

Done in open court this 5th day of September, 1914

J. R. TUCKER,

District Judge.

[Endorsed]: No. 2349. In the District Court for the District of Alaska, Second Division. H. Greenberg, Plaintiff, vs. Jack Lesamis et al., Defendants. Order Confirming Marshal's Sale. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Sep. 5, 1914. G. A. Adams, Clerk. By —————, Deputy. J. F. Hobbes and William A. Gilmore, Attorneys at Law, Nome, Alaska, Attorneys for Plaintiff. Vol. #10, Orders & Judgments, page 587. C. [118]

*In the District Court for the District of Alaska,
Second Division.*

H. GREENBERG,

vs.

Plaintiff,

JACK LESAMIS, JOHN TYAPAY, ANDY GAR-
BIN, GEORGE STANLEY and SAM
SALLO,

Defendants.

Proposed Bill of Exceptions.

This cause coming on for trial before said Court, the Honorable C. D. Murane judge presiding without a jury, on the 15th day of September, 1913, on the complaint, the answer of defendants Lesamis and Garbin, the answers of defendants Stanley and Sallo, replies to said answers, the supplemental answer and cross-complaint of defendants Stanley and Sallo, and the reply thereto,—plaintiff appearing by J. F. Hobbes and William A. Gilmore his attorneys, and the defendants appearing by G. J. Lomen, their attorney, the following proceedings were had and testimony taken, to wit:

[Testimony of H. Greenberg, Plaintiff.]

H. GREENBERG, plaintiff, was sworn and testified as follows:

I am the plaintiff. I know the defendants; have known them since 1906. March 8th or 9th, in 1910, I met them at their cabin on Klery Creek—Garbin, Tyapay, Lesamis and Sam Magids and I were present. The defendants were hard up, [119]

(Testimony of H. Greenberg.)

short of money and provisions, and they asked me for credit—credit with Robinson, Magids and Company, for operating. Robinson, Magids and I are the Company last named. We had a store at Candle, afterwards we established a store at Kiana.

The defendants represented that they had made valuable discoveries on their mining claims and they showed me gold. I refused them credit, that is, Robinson, Magids & Company refused to extend them credit, and they offered to make a deal with me—they asked me to buy into their mining claims, to take a share with them—to buy an interest with them and to go ahead and operate the mines together. We finally came to an understanding at an agreed price of thirty thousand dollars. They were hard up, living on nothing but fish, and they wanted to get supplies, they offered to sell me a fourth interest in the property. They asked fifty thousand dollars in the first place, then forty thousand, then they came down to thirty thousand dollars. I told them that I have not got any money to buy property with none at all, so they decided to take the money out of the ground, from the profits of the ground, if I will give them a start to go ahead and work the ground with, that they knew they could take it out of the profits of the ground in one year; that all they wanted was to get a chance to get it opened up; so I agreed to give them two thousand dollars worth of supplies. They were perfectly willing to take the money out of the ground if they were able to get supplies to operate on, and then this balance to be taken from the profits of their

(Testimony of H. Greenberg.)

mining. I accepted that offer, I furnished them with groceries and provisions, mining tools, etc. There was to be paid six thousand dollars in all and a balance of twenty-four thousand dollars in addition to furnishing two thousand dollars worth [120] of supplies. I paid the defendants Lesamis, Tiapay and Garbin six thousand dollars by checks on the bank; they cashed these checks; the balance of twenty-four thousand dollars was to be paid when the money comes out of the profits—out of the ground from operating the mines; no time was stated at all, just when the money comes out. A memorandum or deed was drawn up by Mr. Magids. This I now hold in my hand—that is my signature, it was signed by all the others there at that time. I saw them sign it; it bears date March 19th, 1910—we were there at that time. That was the windup of our conversation, from a number of talks we had there on the creek.

Instrument with recorder's certificate offered and received in evidence, marked Plaintiff's Exhibit "A," as follows: [121]

[Plaintiff's Exhibit "A"—Agreement, March 19, 1910, Between Tyapay et al. and Greenberg.]

Klery Creek March 19th 1910

Know all men by these presents That we the undersigned John Tyapay Andy Garbin and Jack Lesamis of the Noatak-Kobuk recording district District of Alaska and H. Greenberg of Nome Ala. enter into this agreement, that for the sum of one dollar Lawful money of the United States in hand paid and other valuable services, for same services H. Greenberg is,

(Testimony of H. Greenberg.)

and shall be a full fledged partner with the above mentioned parties & have one quarter undivided interest in all claims, lodes, water rights aquired or to be aquired and owned by the above mentioned Parties. It is further agreed that H. Greenberg is to furnish the above mentioned parties with provisions from time to time up to till July 1910.

ANDY GARBIN. [Seal]

JACK LESAMIS. [Seal]

JOHN TYAPAY. [Seal]

H. GREENBERG.

Witnesseth:

SAM MAGIDS.

HERMAN BERNHARDT.

[Endorsed]: #1015. Filed for Record the 29 Day of Mar. 1910, at 3 o'clock P. M. and Recorded in Vol. 10, at Page 273, of the Records of the Noatak-Kobuk Recording District. M. F. Moran, Recorder. By _____, Deputy. 3 Folios. 5 Ind. \$2.75. Paid. M. F. Moran.

#2349. H. Greenberg vs. Jack Lesamis et al. Plaintiffs Exhibit "A." Filed Sept. 15, 1913. J. Sundback, Clerk. By J. A. B., Deputy. [122]

The form used was taken from the Miners & Merchants' Bank from book furnished to miners. Magids is not an attorney, there was no attorney nearer than Candle at that time. There was also another agreement prepared on the same day; Mr. Magids also drew that; it was signed afterwards in my presence; Herman Bernhart and Mr. Magids were witnesses.

Paper referred to with recorder's certificate introduced in evidence and marked Plaintiff's Exhibit "B," as follows: [123]

[Plaintiff's Exhibit "B"—Agreement, March 19, 1910, Between Garbin et al. and Greenberg.]

This Indenture made the 19th day of March in the year of our Lord one Thousand nine Hundred and ten between the undersigned Andy Garbin, Jack Lesamis and John Tyapay of the Noatak-Kobuk Recording District of the District of Alaska parties of the first part and H. Greenberg of Nome Alaska party of the second part Witness, That the said parties of the first part, for and in consideration of the sum Thirty Thousand dollars (\$30000.00) Six Thousand dollars \$6000.00 in lawful money of the United States of America to them in hand paid by said party of the second part The receipt whereof is hereby acknowledged and the balance of Twenty four Thousand to be paid of the first money taken out the ground hath granted, bargained, sold, remised, released and forever quit-claimed, and by these presents doth grant, bargain, sell, remise, release, and forever quit claim, unto the said party of the second part, his heirs and assigns one quarter ($\frac{1}{4}$) undivided of all mining claims located surveyed, recorded and held by said parties of the first part situated in Noatak-Kobuk Mining district district of Alaska, together with all the dips, spurs and angles and also the metals, ores, gold and silver bearing quartz, rock and earth therein, and all the rights, priviledges and franchises, thereto incident, appendent and appur-

tenant or therewith usually had or enjoyed; and also all and singular the tenements, hereditaments and appurtenances, thereunto belonging, or in any wise appertaining, and the rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well as in law as in equity, of the said party of the first part, of, in or to the said premises, and every part or parcel thereof, with appurtenances.

To have and to hold, all and singular, the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part his heirs and assigns, forever warranting and defending the same against the claims of all persons, save and except the United States. [124]

ANDY GARBIN. [Seal]

JACK LESAMIS. [Seal]

JOHN TYAPAY. [Seal]

Witnesseth:

SAM MAGIDS.

HERMAN BERNHARDT.

[Commissioner's Seal]

[Endorsed]: #1016. Filed for Record the 29 Day of Mar., 1910, at 3 o'clock P. M. and Recorded in Vol. 10, at Page 274 of the Records of the Noatak-Kobuk Recording District. M. F. Moran, Recorder. By _____, Deputy. 4 Folios. 5 Ind. \$3.15. Paid. M. F. Moran.

#2349. H. Greenberg vs. Jack Lesamis et al. Plaintiffs Exhibit "B." Filed Sept. 15, 1913. J. Sundback, Clerk. By J. A. B., Deputy. [125]

(Testimony of H. Greenberg.)

Magids got this form from the same little book. We departed from Klery Creek the next day. I was not to make any charge for the provisions mentioned in the agreement and did not do so; they were part of the consideration; we charged for some small extras, if I am not mistaken. We called this the mining copartnership, the Klery Creek Mining Company. Mining operations were started on the placer claims mentioned in the complaint; the defendants hired a man by the name of Bob Fox as foreman—I was not there; I was in Nome during the summer of 1910; I went up there in the fall of 1910. Kiana is fifteen miles south of Klery. Robinson, Magids and Company established a store there in 1910; several boys had charge; Mr. Levy was one of them. After the mining stopped in 1910 and while I was there we had a little friendly talk to figure up the bills that have to be paid and about taking care of the business; we had no disagreement—not a word. The Klery Creek Mining Company had a credit at our store in Kiana. A settlement was made up between the company in the fall of 1910, Mr. Garbin and Mr. Magids being present; Lesamis and Tiapay had left for Nome to go outside; Mr. Garbin represented them. The gross proceeds for 1910, according to the books, were sixteen thousand three hundred fifty-one and forty-two hundredths dollars; the expenses were eight thousand nine hundred fifty-nine and seventy-five hundredths dollars. There was a statement of how the account stood at the close of mining operations in 1910 made out.

(Testimony of H. Greenberg.)

Mr. Garbin admitted it was correct; he was satisfied. The profits for the year 1910 [126] were seven thousand three hundred ninety-one and fifty-two hundredths dollars. The profit was divided between the three partners, Garbin, Lesamis and Tyapay. I did not get a cent because that was the agreement that we had at the time I made the deal with them. I was to give them the profits above expenses and to take up to six thousand dollars and then the balance was to be taken from the profits to pay the thirty thousand dollars, which I was to give them for the fourth interest. They made no demand or protest against this division of the profits; they were satisfied; neither of the defendants claimed or made any demand that he was entitled to one-third of the gross proceeds; there is no ill feeling or dispute between us before the fall of 1911; at the time of the settlement in 1910, there was an agreement made between Garbin and myself with reference to the work to be opened up and conducted the coming summer; they went short about two thousand dollars, Garbin, Lesamis and Tyapay, and they wanted about two thousand dollars to supply them with their winter supplies, and wanted to know if Robinson, Magids and Company would carry them for the next year; this was understood between Garbin, Magids and myself; this conversation was had at the Kiana store; at that time we arrived at an understanding or settlement of our account for the previous year; at that time Garbin paid his third part of the two thousand dollars; the other

(Testimony of H. Greenberg.)

partners did not pay their share themselves, but it was deducted. Mr. Garbin represented Lesamis and Tyapay; they had notified me that he was to represent them, that what he did was satisfactory to them; they gave him authority to act for them.

During the winter and spring of 1910 and 1911, they [127] worked, prospecting, and doing assessment work for the Klery Creek Mining Company on the claims mentioned in the agreement. Mr. Garbin was there; he was there for himself and he also was there for the other partners. I was not there myself. Garbin hired the men, Robinson, Magids and Company paid the bills, acting as treasurer employed by Klery Creek Mining Co. as a sort of clearing-house. The partnership built cabins for next summer's work, one or two cabins.

Mr. Levy kept the books for Robinson, Magids and Company, and everything they got in the way of supplies is charged up to them, and they were credited with gold-dust brought into the store.

Stewart Fleming acted as foreman in 1911; they sent a telegram to me to get them a new foreman from Nome, and I sent Fleming up; he commenced in December, 1910; he remained until they shut down in 1911 last part of August. Garbin expressed himself as being well satisfied with Fleming as foreman. They operated on No. 2 Above Star Association; that is one of the claims described in the deed, one of the partnership claims; they were digging and sluicing, building ditches, etc. I was not there myself. Tyapay was outside that summer; Garbin

(Testimony of H. Greenberg.)

was boss around there; he was foreman over Fleming, telling him what to do. He had a letter written down to me from Mr. Fleming, and I know from that; he signed orders on the store for supplies and provisions, and he sent an order for me to send men up to the creek that summer; we sent the men up as requested by him and Lesamis.

The gross output of gold from the time we started operations in 1910 until September, when we closed down in the fall of 1911, was twenty-six thousand nine hundred ten and eighty-eight hundredths dollars; the net losses was eighteen thousand two hundred eighty-two and fifty-three hundredths [128] dollars; this amount was due from the Klery Creek Mining Company to Robinson, Magids and Company, not all of it; seventeen thousand one hundred twenty-four dollars of it was so due; this claim was assigned to Mr. Murphy; that is the account he sued on; only a part of it has been paid, something like two hundred dollars; this was paid in royalties received by Robinson, Magids and Company; the rest is still due.

Frank Lesamis is another creditor of the Klery Creek Mining Company to the extent of one thousand one hundred fifty-eight and fifty-three hundredths dollars; that was for money which they borrowed from Frank Lesamis when they went to work; they got some money from Frank Lesamis to pay the bills; this was in 1911. Jack Lesamis took it from his brother—he got it from his brother and gave it to Robinson, Magids and Company for

(Testimony of H. Greenberg.)

them to realize on and pay on their account; the money he got from his brother was paid to the Robinson, Magids and Company on the Klery Creek Mining Company's indebtedness; we paid it on the indebtedness to pay horse hire this indebtedness of the Klery Creek Mining Company. I didn't close them down in 1911; I heard from Stewart Fleming that they had closed down the operations, that Garbin and Lesamis had ordered him to shut down operations and I went up the Creek; they told me they were not taking out enough to pay expenses and they decided to shut down; they never mentioned a word about, or denied or disputed that I was one of the partners or owner of a fourth interest in all these claims on the creek, and never said a word about the money we had furnished them or for the credit they had had for the operation and mining during the summer, never said a word about [129] being responsible for the debts. They was to go on down and make out the papers and make out a mortgage on the property and a note to Robinson, Magids and Company, and get money to pay off the indebtedness.

Lesamis, Garbin and Fleming, Ed. Fleming and Stuart Fleming and I were there when this conversation took place. We did not exactly know how much they were indebted, but estimated it at about fifteen thousand dollars, which they were to get from Robinson, Magids and Company.

Garbin and Jack Lesamis had the gold that was taken out during the summer of 1911; Garbin kept

(Testimony of H. Greenberg.)

it in his strong-box in his cabin. He brought it to Robinson, Magids and Company—to our agents down there. Andy Garbin had the key to the strong-box on the claim out there. He turned the gold over to me; I took it out to Robinson, Magids and Company's store at Kiana; he said to me, "Take it and pay up the bills." The workmen there on the creek demanded their wages, so they gave orders on Robinson, Magids and Company that they should pay the wages, and they did.

We started to go down to Kiana and make out the papers and give the notes to Robinson, Magids and Company and raise the money on the mortgage. They did not dispute their liability for their proportionate part of the expenses until this suit was commenced. We met in Kiana; in the meantime they turned over their property to Sallo and George Stanley, they so informed me; they said nothing about what they were going to do about their indebtedness; they said they intended to have nothing more to do with the ground; that they had no money and nothing to eat—that they were through with it; [130] they decided they would not operate any more for themselves, so they decided they would let a lot of lays to different people; lays were let to pay bills, collect the royalties and pay bills of Robinson, Magids and Company's indebtedness; that is the reason the lays were let; about ten leases were let, I think; this is one of the instruments executed at that time. This is my signature and the signature of the partners; Ed Fleming and Stuart Fleming

wrote these leases; the leases were on different claims; one or two on one claim—all the leases were signed in the same manner as this one, in the partnership name.

Paper referred to received in evidence marked Plaintiff's Exhibit "C," and is as follows: [131]

[Plaintiff's Exhibit "C"—Agreement, September 1, 1911, Between Greenberg et al. and Boskovitch et al.]

This agreement made & entered into this 1st day of Sept. 1911, by and between H. Greenberg, J. Lasamis, Andy Garbin, John Tapay, by H. Greenberg, his attorney in fact, parties of the first part, Lessees, and Mike Boskovitch and Paul Krietz, parties of the second part, Lessees, Witnesseth:—

For & in consideration of the rents, royalties and other consideration hereinafter mentioned, the parties of the first part hereto, do hereby lease to the parties of the second part, that certain portion of No. 1 Above on Klary Creek, tributary of Squirrel River, in the Kobuk Noatak Recording District of Alaska, more particularly described as follows:—

Commencing at a point in the wing dam where a blazed post is located, said post marked S. E. Cor of Lay, and running thence upstream along the wing dam continuing upstream 20 ft. (twenty feet) from the westerly bank of the island to the head dam, which is located on the lower end of No. 2 Above, 2nd parties to have the right to use the head dam thence westerly to the N. W. Corner of No. 1 Above, thence southerly along the west side

O K
E.E.F.
O K
J.W.S.

line of No. 1 Above to a point opposite the above mentioned blazed post in the wing dam, thence easterly to the place of beginning.

Subject to the following conditions

1st to have and to hold said demised premises with the appurtenances, unto the said lessees from the date hereoff Sept. 1st 1911 until Oct. 1st 1913, unless sooner forfeited or determined through the violation by the said lessees of any covenant or agreement hereafter contained.

2nd The parties of the 2nd part to pay to the parties of the 1st part 20% (twenty per cent) as rent and royalty of all the gold or other precious metals extracted from the premises during the first year of this lase or until Sept 1st 1912 and 25% (twenty-five per cent) as rent and royalty of all the gold & other precious metals extracted from the premises during the bal of the life of this lease, or up to Oct. 1st 1913. [132]

3rd To allow the lessors and their agents to at all times enter upon and into all parts of the said premises for the purpose of inspection and to be present and to assist at all cleanups and the retorting of amalgam and weighing of same, and to give said lessors or their agents due notice of each cleanup before it is made.

4th Parties of the 2nd part not to locate or record the said premises and not to allow any person or persons not in privity with the parties hereto to take or hold possession thereof under any pretext whatever during said term or to sublet any portion thereof

without the written consent of the parties of the first part

5th It is further agreed that should the parties of the second part fail to work on the said premises for a period of 60 days (sixty days) during the winter months, or during a period of 30 (thirty days) during the summer months, it shall be considered a forfeiture of this lease. Continuous work being the essence of this agreement.

6th. Parties of the second part agree to record proof of labor at the office of the recorder at Kiana for each year during the term of this lease.

It being expressly understood and agreed that upon the violation by said lessees of any covenant or agreement herein contained this lease and the terms thereof shall at once become forfeited and determined and the lessor may at once with or without process of law, enter into the possession of said premises and remove any and all persons found thereon.

It is further agreed that upon the expiration of this lease, all ditches and permanent improvements made upon the premises by the lessees shall become the property of the lessors without payment or further expense to them.

In Witness Whereof the said parties hereunto have set their hand and seal in duplicate the day &

(Testimony of H. Greenberg.)

year first above written. [133]

H. GREENBERG. (Seal)

JACK LESAMIS. (Seal)

ANDY GARBIN. (Seal)

JOHN TAPAY. (Seal)

By H. GREENBERG,

His Atty. in Fact.

MIKE BOSKOVICH. (Seal)

PAUL KRETS. (Seal)

Signed and sealed in the presence of

E. E. FLEMING,

W. S. FLEMING,

Witness. [134]

Department of Justice,

Second Division, District of Alaska,

J. W. Southward,

United States Commissioner,

Recorder Noatak-Kobuk District, Kiana, Alaska.

Kiana, Alaska, ———, 191——.

Filed for record Sept. 5th, 1911, 9 A. M. M. F.
Moran, Recorder. J. W. Southward, Deputy.

The foregoing is a true and correct copy of agree-
ment as filed for record in Vol. 13, at page 127 of
the records of the Noatak-Kobuk Recording District.

[Commissioner's Seal] J. W. SOUTHWARD,

Recorder.

[Endorsed]: #2349. H. Greenberg vs. Lesamis
et al. Plaintiff's Exhibit "C." Filed Sept. 15, 1913.
J. Sundback, Clerk. By J. A. B., Deputy. [135]

The leases were all signed about September 1st,
1911, on the part of the Klery Creek Mining Com-

(Testimony of H. Greenberg.)

pany; they were all the same royalty only on different claims. The deed from Garbin to Stanley, from Lesamis to Sallo, is dated September 2nd, the following day. I demanded a mortgage preparatory to paying the indebtedness; they said they had sold their interest in the property, and that they were not going to have anything more to do with the mining ground; that is the first time I had any disagreement with them. I met Stanley and Sallo about that time; they came to the store and said they had bought out Lesamis and Garbin and said they owned the partnership at that time. I told them to pay up the indebtedness, but they said they had nothing to do with the old debt or the old partnership affairs; I said, "I expect then we will have to commence a lawsuit." Stanley says, "Yes, it looks like it." Mr. Levy was present. Neither Garbin, Tyapay or Lesamis have complied with the settlement between us or paid the account between us, they refused to pay their account to us, and refused to go ahead with the settlement of their accounts; we never had an accounting.

Tyapay and Lesamis had been outside during the winter of 1910 and 1911, they returned to Nome in the spring of 1911.

This instrument is a deed which they gave to me here in Nome at that time, it bears date June 17th, 1911.

Paper referred to received in evidence marked Plaintiff's Exhibit "D," being as follows: [136]

[Plaintiff's Exhibit "D"—Deed, June 17, 1911,
Tyapay et al. to Greenberg.]

THIS INDENTURE, made the 17th day of June in the year of our Lord one thousand nine hundred and eleven Between John Tyapay, Andy Garbin, and Jack Lesamis the parties of the first part, and H. Greenberg, the party of the second part,

Witnesseth: that the said parties of the first part, for and in consideration of the sum of Thirty Thousand (\$30,000.00) Dollars, Gold Coin of the United States of America, to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, remised, released and forever quit-claimed, and by these presents do grant, bargain, sell, remise, release and forever quit-claim unto the said party of the second part, and to his heirs and assigns an *undivided* one quarter interest of in and to all mining claims, mining ground and mining property, located, owned, surveyed or unsurveyed, recorded or unrecorded, held, owned or claimed by the said parties of the first part, and being situate in the Noatak-Kobuk mining and recording district, District of Alaska; the interest hereby conveyed being an undivided quarter interest of each of said parties of the first part, and a quarter interest in the whole of said claims and mining property. (\$6,000.00 of said consideration has been paid in cash and hereby acknowledged; the remaining \$24,000.00 is to be paid from the proceeds of said mining ground, from the gross output, and from the first output, after necessary expenses of operating said

ground have been deducted; all the first gross output shall be applied to the payment of said \$24,000. after necessary expenses of operating have been deducted.)

TOGETHER with all the dips, spurs and angles, and also all the metals, ores, gold and silver bearing quartz, rock and earth therein; and all the rights, privileges and franchises thereto incident, appellant and appurtenant, or therewith usually had and enjoyed; and also, all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining and the rents, issues and profits thereof; and also, all the estate, [137] right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said parties of the first part, of in or to the said premises, and every part and parcel thereof, with the appurtenances.

TO HAVE AND TO HOLD, all and singular the said premises, together with the appurtenances and privileges, thereunto incident, unto the party of the second part, and to his heirs and assigns forever.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

JOHN TYAPAY. (Seal)

JACK LESAMIS. (Seal)

Signed, sealed and delivered in the presence of

J. F. HOBBS,

JAS. W. BELL,

As to Signature of John Tyapay.

J. F. HOBBS,

EUGENIA LESAMIS,

As to Signature of Jack Lesamis. [138]

United States of America,

District of Alaska,—ss.

On this 17th day of June A. D. one thousand nine hundred and eleven, personally came before me J. F. Hobbes, a Notary Public in and for said District, the within named John Tyapay, to me personally known to be the identical person described within and who executed the within instrument, and they acknowledged to me that they executed the same freely, for the uses and purposes therein mentioned.

WITNESS my hand and seal this 17th day of June, 1911.

[Notarial Seal]

J. F. HOBBS,

Notary Public in and for the District of Alaska.

United States of America,

District of Alaska,—ss.

THIS IS TO CERTIFY that on this 8th day of July, 1911, personally came before me, the undersigned notary public in and for the District of Alaska the within named Jack Lesamis, to me personally known to be the identical person described within and who executed the within instrument, and he acknowledged to me that he executed the same freely, for the uses and purposes therein mentioned.

WITNESS MY HAND AND SEAL this 8th day of July, 1911.

[Notarial Seal]

J. F. HOBBS,

A Notary Public in and for the District of Alaska,
Residing at Nome, Alaska.

[Endorsed]: #1554. Deed of Mining Claim. John Tyapay, Jack Lesamis, to H. Greenberg. Dated ———, 191—. Recorded at the Request of Mr. Levy Sept. 16, A. D. 1911, at 35 Min. Past 1 o'clock, P. M., in Vol. 13 of Deeds, etc., at Page 161, Records of Noatak-Kobuk Recording Precinct. M. F. Moran, Recorder. By J. W. Southward, Deputy Recorder. 7. F. 5. Ind. \$3.45.

#2349. H. Greenberg vs. Lesamis et al., Plaintiffs' Exhibit "D." Filed Sept. 15, 1913. J. Sundback, Clerk. By J. A. B., Deputy. [139]

Witness Greenberg was temporarily excused.

[Testimony of Hugo Eckhart, for Plaintiff.]

HUGO ECKHART, sworn and testified for plaintiff:

Direct Examination by Mr. GILMORE.

My name is Richard Hugo Eckhart. My business is mining; for the last three years have resided at Klery Creek and Nome. I am acquainted with the parties to this lawsuit. In 1911 I was working a lease on the Star Association; about July 2d, 1911, I had a conversation with defendant Garbin on No. 1 Above the Star Association about getting men to work for me. I asked him if he would not let us have some men for a day or two. He told me I would have to see his foreman, Stuart Fleming; that

(Testimony of Hugo Eckhart.)

is what he said; I did; Garbin was looking after the work on No. 1. I would call it superintending. He was doing work. He appeared to be telling Stuart Fleming what to do. I have no interest in the case.

Cross-examination by Mr. LOMEN.

I worked on the Star all summer about one-half a mile from No. 1; we visited back and forth. I was surely up to No. 1 a dozen times. I was visiting the boys. I did not know that there was any dispute about a partnership. When Garbine said "My foreman," it just simply seemed to me that Garbin had more authority than Fleming. We had had quite a few conversations; most of the boys on the creek all know that he had more authority than Fleming. I just heard this amongst the boys. I don't remember any person who said so. I knew Greenberg was working as a partner with the other boys. I don't know how I found out that he was a partner. I heard about the agreement when Greenberg bought in—bought in as a partner, that is what I mean. I don't remember that Levy told me that Greenberg controlled the works. I don't remember that Fleming told me that he was employed by Greenberg. We Discovery boys understood that Greenberg was working the ground with the other boys. I don't remember that Garbin told me that Fleming would only take orders from Greenberg. There was [140] more or less trouble between Garbin and Fleming. I remember that Fleming was complaining about Garbin. I heard something to the effect that Greenberg was paying expenses. I only know that Garbin at

(Testimony of H. Greenberg.)

one time referred to Fleming as his foreman. That is all I know about the matter.

Tuesday, October 16th, 1913.

**[Testimony of H. Greenberg, for Plaintiff
(Recalled).]**

GREENBERG on the stand for further direct examination:

I have a general power of attorney from Tyapay; that is the signature of John Tyapay.

Paper referred to received in evidence, marked Plaintiff's Exhibit "E," as follows: [141]

**[Plaintiff's Exhibit "E"—General Power of
Attorney—Tyapay to Greenberg.]**

KNOW ALL MEN BY THESE PRESENTS

That I, John Tyapay of Nome, in the District of Alaska, have made, constituted and appointed, and by these presents do hereby make, constitute and appoint H. Greenberg of Nome in the District of Alaska, my true and lawful attorney, for me and in my name, place and stead, and for my use and benefit to ask, demand, sue for, recover, collect and receive all such sums of money, debts, dues, accounts, legacies, bequests, interests, dividends, annuities and demands whatsoever, as are now or shall hereafter become due, owing, payable or belonging to me and have, use and take all lawful ways and means in my name, or otherwise, for the recovery thereof, by attachments, arrest, distress, or otherwise, and to compromise and agree for the same, and to make, sign, seal and deliver acquittances, or other sufficient discharges for the same, for me and in my name, to bargain, contract,

agree for, purchase, receive and take lands, tenements, hereditaments, and accept the seizin and possession of all lands, and all deeds, and other assurances in the law therefor, and to lease, let, demise, bargain, sell, remise, release, convey, mortgage and hypothecate lands, tenements and hereditaments, upon such terms and conditions and under such covenants as he shall think fit. Also to bargain and agree for, buy, sell, mortgage, hypothecate and in any and every way and manner deal in and with goods, wares and merchandise, choses in action and other property, in possession or in action, and to release mortgages on lands or chattels, and to make, do and transact all and every kind of business of what nature and kind soever. And also for me and in my name, and as my act and deed, to sign, seal, execute, deliver and acknowledge such deeds, leases and assignments of leases, covenants, indentures, agreements, mortgages, hypothecations, bottomries, charter parties, bills of lading, bills, bonds, notes, receipts, evidences of debt, releases and satisfaction of mortgage judgment and other debts, and such other instruments in writing, of [142] whatever kind or nature, as may be necessary or proper in the premises:

Giving and Granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully, to all intents and purposes, as I might or could do if personally present, hereby ratifying and confirming all that my said Attorney shall lawfully do or cause to be done by virtue of these presents.

In Witness Whereof the said party of the first part has hereunto set his hand and seal this 17th day of June, 1911.

JOHN TYAPAY. Seal.

Seal

Seal

Seal

Seal

Signed, sealed and delivered in the presence of

J. F. HOBBS,

JAS. W. BELL.

United States of America,

District of Alaska,—ss.

On this 17th day of June A. D. one thousand nine hundred and eleven personally came before me J. F. Hobbes a Notary Public in and for said District the within named John Tyapay to me personally known to be the identical person described within and who executed the within instrument, and acknowledged to me that he executed the same freely, for the uses and purposes therein mentioned.

Witness my hand and seal this 17th day of June, 1911.

[Notarial Seal]

J. F. HOBBS,

Notary Public in and for the District of Alaska.

[143]

[Endorsed]: #1542. Power of Attorney General. John Tyapay to H. Greenberg. Dated June 17th, 1911. Filed and Recorded at Request of H. Greenberg. Sept. 5th, A. D. 190—, at — min. Past 9 o'clock A. M., in Volume 13, of Power of Attorney, at Page 143, Records of Noatak-Kobuk Recording

(Testimony of H. Greenberg.)

District, District of Alaska. M. F. Moran, Recorder.
By. J. W. Southward, Deputy Recorder. 6-4-\$3.45.

#2349. H. Greenberg vs. Lesamis et al. Plaintiff's Exhibit "E." Filed Sept. 16, 1913. J. Sundback, Clerk. By J. A. B., Deputy. [144]

Tyapay said, "These people can say what they please, but I will stand by you," referring to me; that was subsequent to the date when the deed was made out in the presence of him and Lesamis; Lesamis signed it in June, at the same time; Garbin was not present at that time,—he was in Kiana; this was in the summer of 1911—it was not signed by him later; it was presented to him for signature in July; he never signed it, however. I was in Nome all summer in 1911. I received from these gentlemen, my partners up there, a telegram; this is the telegram; I received it about July 7th.

Telegram marked Plaintiff's Exhibit "F" for identification, being as follows:

**[Plaintiff's Exhibit "F"—Telegram, July 7, 1911,
Garbin to Greenberg et al.]**

**"ALASKA TELEPHONE & TELEGRAPH
COMPANY.**

RECEIVED.

Candle, Alaska, July 7, 1911.

Greenberg Lesames & Tyapay, Nome.

Send forty men to our camp on Klery. No men to be had here.

ANDY GARBIN by H. ROBINSON."

I complied with the telegram. This is a letter

(Testimony of H. Greenberg.)

from Tyapay and Jack Lesamis to me. That is the signature of both of them; I received it about October 20th, 1910. I am familiar with the handwritings of Tyapay and Lesamis—their signature.

Paper referred to received in evidence and marked Plaintiff Exhibit “G,” being as follows: [145]

**[Plaintiff’s Exhibit “G”—Letter, Oct. 20, 1910,
Tyapay and Lesamis to Greenberg.]**

Nome Alaska Oct. 20/1910.

Mr. H. Greenberg:

Gentlemen: I hereby writte you a few lines. That we are going outside for this Winter, we will be glad to see you in Nome before we leave this Town but looks as we could not. Well: but can not helped. But the same time I let you know: we going outsitie, and you will be round here, or round Kobuk. Will you please? give it hand to Andy Garbin for doing all they assessments work, and to looke that every claim will be Recordet, and that every Claim will have done nofe work, and all they Prospects And you tell to Mr. R. H. Fox that, let im stard early in neckst spring that would loose no time as this we dit this last spring. And if you not like to Higher, R. Fox, and if you have some good man, go to it. We are intend to come early in the spring. Anything you will needet we ill be

(John Tyapay, Pittsburg Pa. U. S.)

(Jack Lesamis San francisko California U.
S.)

(Testimony of H. Greenberg.)

Also we gadet some Money from Candle

J. Lesamis \$1,000.

dollars

J. Tyapay \$2,000.

You can not to be mate, that we done it because we have to; we wan to going for the South (like a)

Do best you can if you please and send up all the provision we Ordered from your store

Yours Partners

JOHN TYAPAY.

JACK LESAMIS.

Good Bay

[Endorsed]: #2349. Greenberg vs. Lesamis. Plaintiff's Exhibit "G." Filed Sept. 16, 1913. J. Sundback, Clerk. By J. A. B., Deputy. [146]

When I received this letter I told them to send up plenty of supplies for operating all summer; they had ordered goods from our store—about two thousand dollars worth; these were the goods I mentioned yesterday. This money that is referred to in this letter, which was one thousand dollars to Lesamis and two thousand dollars to Tyapay, received from Candle. I know they got that money from Robinson Magids and Company; they drew about six thousand dollars before they left Kiana; some of it was the money which came from the operations of the claims; we trusted them for the balance. I received this letter in John Tyapay's hand writing dated February 20th, 1912.

The paper referred to and received in evidence marked Plaintiff's Exhibit "H," being as follows:
[147]

**[Plaintiff's Exhibit "H"—Letter, Feb. 20, 1912,
Tyapay to Greenberg.]**

Feb. 20, 1912.

from John Tyapay
to Mr. H. Greenberg

Gentlemen: I writte you this few lines, it you knows that, I gade promise from you, that you will writte to mi last fall on the closing seasson what was new up there, how you people comen up, it is how you doing up there, and beside this Two Tousand Dollars, I was expecting to get, on the Mordgade, One tousand dollars to Hungary and One tousand to the first National Bank of Pittsburg. But I can not get even letter from you, only I gade Telegraph from lowyers from Mr. Cohram and Mr. Lowmen that is suit entred to dissolve (Brek) Partnership. That a bed news, when you people can not to gade long. Who is that fellow who stard the trouble?

Mr. H. Greenberg you understand, I give you my Power of Attorney so you do how best you can for me, and for yourself, also for the anothere boys. it will be best if can be everithings together as we have stardet. But if the suit will come up to dissolve (brek) the partnership, then you take care of my interest until I come up there I expect to be there this summer. Or, if you, or anybodi van to buy my interest in the Kobuk Mining District, I willing to sell, for the price of \$10,000.00 Ten tousand dollars,

(Testimony of H. Greenberg.)

it worth \$30,000 any time. But when the trouble come up betwen you fellows, so if you, or any Body, pay to the First National Bank of Pittsburg for my credit \$10,000.00 Ten tousand dollars until 1st of July 1912 I will send Deed from my interest in the Kobuk-Noatak Mining District, District of Alaska, I will send you another letter with the first Boat.

Best Regard to the another friends, Yours

JOHN TYAPAY.

Good Bay

Europe, Hungary.

[Endorsed]: #2349. Greenberg vs. Lesamis et al. Plffs. Exhibit "H." Filed Sept. 16, 1913. J. Sundback, Clerk. By J. A. B., Deputy. [148]

I have not heard from Tyapay since. I never had any misunderstanding with Tyapay about the partnership; he has not been here since 1910. When this partnership was formed the assets of the company was the mining property no personal property. I refer to those claims mentioned in the complaint; at the present time the assets of the company are mining property—mining claims—a few cabins and tools, sluice-boxes, etc., very little mining equipment; these assets do not include any money or gold-dust that I know of.

Mr. Garbin never made any charge for his time for 1911 that I know of, because he was interested in the mining that is what he was supposed to do, to attend to the mining and put in his time mining for the company. I never put in any claim for my time or personal expenses going to and from the mines in

(Testimony of H. Greenberg.)

1911. There was no understanding or agreement that I would put in my time for nothing.

Cross-examination.

My business is mining and mercantile business. I am not mining now. In 1910 I mined the Bessie in this district the Nome district. My partners mined with me in other places; then I mined with my partners on Klery Creek in 1910 and 1911; the same company mined at Kiana; I have an interest in the stores, the Bessie in Nome; I am interested in stores in Candle, Deering, Keewalik and Kiana—interested with Robinson, Magids and Company and the Bessie Company; that store at Kiana was established in 1910, my time is given to these various businesses.

Q. Now, you say in your partnership agreement that you and the defendants in this case, your partners, [149] were to put in all of your time?

A. Well, all that is necessary, I am to put in, not all of my time, nobody can give all of their time, but I am to give all of my time what is necessary and not make any charge.

I am to have an interest in the company and I am to put in all of my time what is necessary looking after that interest, but they were to devote all of their time to the company and I was to devote all of my time to the company when I can spare the time. At the time we made the agreement that is what they was supposed to do, that they would devote their time in looking after the property; they were under no obligations to do so.

I heard of the strike on Squirrel River about

(Testimony of H. Greenberg.)

Christmas, I was in Nome; I went to Candle and Deering; Mr. Magids and I talked about the Squirrel River strike and so we said we would go up and see what it amounted to; we went to the camp on Klery Creek. I knew Tyapay, Lesamis and Garbin several years before. I met the boys in their camp there and we were talking over, just general talk like about the strike. I don't remember that I offered to buy an interest in their claims at that time. I don't remember ever trying to get a half interest in their properties. I don't remember that there was any talk between us about sixty thousand dollars for a half interest; I didn't say I wanted to buy in with them; they offered to sell to me; I don't remember what they offered to sell for first; of course, they asked me everything they could if they thought I would pay it. Sam Magids was with me; I don't remember that Sam Magids first drew one agreement based on a half interest; I don't remember every thing that happened [150] it is too long ago; maybe he first drew up an instrument based on a half interest, and subsequently we agreed upon a quarter interest in the property; I don't remember. I got a deed from them that time; the deed is in evidence; there was another agreement, also in evidence, made at the same time; I don't remember which paper was made out first; the agreement was reached before either of the papers was made out.

Q. Now, what was the conversation between you people at that time in regard to the partnership? Just give us the conversation.

(Testimony of H. Greenberg.)

A. The conversation was between us there, all of us, that they wanted some money to go ahead and get supplies; they were living on fish and flour, that was all they had to eat, and they wanted money, they wanted credit.

Q. I am asking about the conversation, what did they say?

A. Oh, I don't remember the conversation, it is too long ago for me to remember these things. They were talking so much up there I couldn't tell you what was said back and forth, what they wanted and what they needed most; they were telling me that they wanted money to go ahead, that they couldn't open up the ground unless they got some money; we were talking there amongst us two days and a half, about all night; I couldn't tell you everything that was said.

Q. Now, this short agreement was intended to embody all the results of that conversation, wasn't it?
[151]

A. I don't remember which one, if either of them said anything about that; the agreement is the agreement the way it was stated there, that I was to give them about two thousand dollars worth of supplies up to July 1st, enough to start operating on and six thousand in cash; about two thousand in supplies and six thousand in cash. I told my boys to furnish about two thousand dollars worth of supplies, there was no store in Kiana as yet. I don't know that Jack Lesamis had considerable money and three or four tons of provisions at the time our agreements were

(Testimony of H. Greenberg.)

made; he may have had without me knowing anything about it; I will not swear that he didn't; they represented to me that they had no provisions and no money; I don't know what money Garbin or Tyapay had at that time; under our agreement I was to get an interest in what they acquired in the future; they were not to have an interest in what I acquired. They staked me in on the Oregon Claim, that was not under that agreement they just staked me in. I got an eighth and Magids got an eighth in the Oregon Claim.

I don't know if the Klery Creek Mining Company signed any of the leases. I wanted my share of the royalties to be collected under the leases; it belongs to the company; the ground belongs to the company. I know that the company signed it or the individual parties signed it. Mr. Magids is interested in everything Robinson, Magids and Company own; he is one of the partners. Robinson, Magids and Company are interested with me—in business with me; they are not interested with me in these mining claims, not in the [152] papers so far. I hold no interest in trust for them; I don't know what they expect to get; I have not made any promises to them; I have not accounted to them for any profits; there were certain profits of the Klery Creek Mining Company growing out of the mining in 1910.

Now, these seven thousand dollars profits in 1910 were divided up between Lesamis, Tyapay and Garbin, it was paid in money, I think; Robinson-Magids got the gold-dust I suppose. I don't remember

(Testimony of H. Greenberg.)

where they sent it; I don't remember that I took it to the Miners & Merchants' Bank or that the Bank gave me credit for it; I don't remember where that money went to; I don't remember whether I individually and personally got credit for it; I don't remember every time I sell some gold-dust.

(Tyapay) Lesamis was paid a thousand dollars by check from the Candle Store; Robinson, Magids and Company sent a telegram and the Bank paid it. Tyapay got two thousand, that is mentioned in the letter, that was his share of the profits in 1910, approximately anyhow. We completed our settlement and arrived at this dividend in that way; we divided up and gave him credit for that much; I don't know that he ever got any more from his profits. Lesamis got one thousand cash from Robinson, Magids and Company; he got a check on the Bank here, that is mentioned in Tyapay's letter; Garbin got two thousand dollars, thirteen hundred in cash, and he got some seven hundred dollars that he would put up to his account for the company for operating in 1911; that is my construction. They were all to get two thousand dollars apiece; they were all supposed to get two thousand; Garbin got thirteen hundred dollars and seven hundred dollars was supposed to be left for future operations in 1911; that is the reason that he [153] got two thousand, but he agreed that he would draw only thirteen hundred and he would leave the balance to his credit; he was not going outside and he agreed to leave that balance to his credit so he could have it here when he started operations

(Testimony of H. Greenberg.)

in the spring; Robinson, Magids and Company agreed to carry the balance on the books to his credit and he would take it out in the spring.

Robinson, Magids and Company acted as agents; they took the gold-dust and paid the bills; somebody had to credit them and keep track of it to help them get started in the spring. Tyapay, Lesamis and Garbin made that agreement before they left; they made it with me personally; Lesamis got more than one thousand dollars out of the profits, he got it charged up to him seven hundred dollars and he took it and gave it to Martin Moran, that was a part of his profits; I don't know that the Klery Creek Mining Company had anything to do with this seven hundred dollars; we charged it to Jack Lesamis; Robinson, Magids and Company, because he took the money from the company; Jack got his money in Nome. There must have been some of the equipment left over from 1910; they ordered things right along; they must have got all new things in 1911; what was left over must have been used up in 1911.

At the time of the settlement in 1910, I had no share; I had got a fourth interest if any profits were made; no profits were made the first year, because the agreement was that they were to get the profits, that is, that they were to get all the profits that was made and the twenty-four thousand dollars was to be paid out of the profits that came out of the ground; that was the agreement that was made in the first place, they were to go to work working the next [154] year just the same as they had the year

(Testimony of H. Greenberg.)

before; whatever was left of profits was to be paid to the respective parties after payment of debts, and out of the operations the following season; the profits of 1910 were paid over, what they did not pay they left over for supplies for the next year; they were supposed to mine again the future years; they left this balance with Robinson, Magids and Company; the books of Robinson, Magids and Company will show that. Tyapay, Garbin and Lesamis did not give Robinson, Magids and Company or me any written authority to take this balance; they did not leave it with me, but they were to take it and it was to be used among the mining partners for subsequent operations; Robinson, Magids and Company held that balance by mutual agreement with Lesamis, Garbin and Tyapay; this agreement was made at the Kiana Store before the gold-dust had been sent to Nome; the Miners & Merchants' Bank if they received the gold-dust would give credit to whoever deposited the gold-dust; they gave me credit probably, or they may have charged me, or any other mining claim, or any other person that gave the gold-dust to them—anybody that was doing business with them; I don't remember this particular transaction myself.

I never told Lesamis that I was going to get out of the company, and that I was going to mine on my own account; I told him that I was not doing it for a pleasure trip, that [155] I had spent all my money I was going to for pleasure, but I told him that next year I hoped to get in better and take out more money; that I wanted to see what was in the

(Testimony of H. Greenberg.)

property; I never told Garbin that I was mining on my own account, nor Tyapay.

I brought Stuart Fleming from Nome, but I employed him for Mr. Garbin himself.

The Klery Creek Mining Company bought all the new tools and mining equipment that we used in mining, and I don't know what individual bought them or ordered them; I gave Stuart Fleming no instructions in regard to what he should do there in 1911; I told him the outline of what Mr. Garbin was going to do; told him that we was all together mining together and that Mr. Garbin was there on the ground looking after the company's interest; I did not tell him not to take any instructions from Mr. Garbin. Garbin exercised authority in regard to the mining by Mr. Fleming if he wanted to, I guess, I was not there; I don't remember that I took the gold-dust to Nome or charged a hundred dollars for doing so.

I was supposed to pay, under the agreement, thirty thousand dollars, but it was understood that we were to take it out of the ground first.

Q. The others were not to contribute in any way, shape or manner to this amount?

A. To the thirty thousand dollars, no, they didn't have to pay me anything towards that, because simply this twenty-four thousand dollars, under our agreement, this comes out from the ground, out from the profits; out from the Klery Creek [156] Mining Company, out from the ground which they have already and out from any ground they locate, any property in that district which they have.

(Testimony of H. Greenberg.)

Q. What property did you understand the Klery Creek Mining Company had?

A. Well, they have some mining claims, a whole lot of mining claims and some cabins around there, and I think nothing else.

Q. Now, is the partnership to pay twenty-four thousand dollars, or is H. Greenberg to pay twenty-four thousand dollars?

A. Nothing until it comes out of the ground.

Q. Well, is it Greenberg's ground or the partnership ground?

A. The ground which is located by Jack Lesamis, Tyapay and Garbin—all of the partners. Until the ground has paid for itself it is all in the partnership and after it comes out of the profits of the ground it is to be paid for twenty-four thousand dollars out of the profits, out of all the ground belonging to this partnership, that was the agreement made.

Q. Now, what was the language used by these people which in any way warranted any such results as that?

A. The language was simply that they were supposed to get two thousand dollars worth of supplies.

Q. Now, cut the supplies out—the supplies had nothing to do with the thirty thousand. [157]

A. It certainly did, that was a part of the agreement. They were to get two thousand dollars, or about two thousand dollars worth of supplies, and they gave an order to Mr. Magids when we left there, that they were to get these supplies which was to be shipped to them from Candle, because this was in the winter

(Testimony of H. Greenberg.)

time and they were short of provisions; then six thousand dollars was to be paid to them out of the profits, whatever was made out of the first season's profits, and this twenty-four thousand is supposed to be paid out when it is taken out of the ground; each one was to go ahead and go to work and take the money out of the ground and pay for labor; these supplies were free of charge of all expenses at the start, but each one of the partners was supposed to put in his labor taking the money out, and then if anything is left from the profits after all expenses were paid, what is left they get all of the profits up to the amount of twenty-four thousand dollars; I don't get a cent until after the twenty-four thousand dollars is paid to the other partners. Afterwards we are to be equal partners in everything if any profits comes out of the ground; that was it in plain English.

Q. Now, you have not told me yet what was said in order to produce this result. Will you state what was said by the parties there themselves?

A. It was to be paid from the ground; no partnership whatever. It was to be paid from the ground; the [158] simple agreement was that if the money comes out from the ground.

Q. Whose ground?

A. Lesamis, Tyapay and Garbin's.

Q. And Greenberg's?

A. Greenberg had no ground at that time—I had no ground at that time to give them; I didn't give them any ground; but after I got my interest they are to get twenty-four thousand dollars from the

(Testimony of H. Greenberg.)

profits when it comes out of the ground.

Q. That is the agreement?

A. Yes, that is the agreement.

Q. You had no deed?

A. I should have a deed; I didn't become a partner until the money is turned over to them.

Q. When did you become a full-fledged partner?

A. I don't know what you mean. I was a partner, of course, in their mining operations, but I did not get any of the profits out of the ground during the first year. I had a right to my share of the profits but I did not take one cent, because we had agreed that I was to give this first money to them because Lesamis and Tyapay told me that they were going outside; they wanted to take their share of the profits to go outside and I never took a cent. Tyapay got a loan from me of three thousand dollars,—in the fall of 1910. I told him I would deduct it out of the balance of his profits—of his share of the profits. I got a mortgage; he got only one thousand dollars. I got a mortgage and foreclosed it, the amount of the foreclosure was three thousand seven hundred and fifty-one and costs—I [159] suppose it was; I don't know. Tyapay's interest was sold under the mortgage on June 26th, 1912; I don't understand much about these matters; I left that to Mr. Hobbes to look after for me. It was bought in for me and the judgment satisfied in full. I must now own Tyapay's interest. I have said that I paid him one thousand dollars and took a mortgage for three thousand, that I got judgment for three thousand seven

(Testimony of H. Greenberg.)

hundred and fifty-one dollars. I have his power of attorney, March 21st, 1912, and June 26th, 1912; I had it all that time.

Lesamis and Tyapay's share of the two thousand dollars credit with Robinson, Magids and Company was charged to them upon Garbin's representation; he told me he had a letter from the boys—I did not see the letter; I took his word; Lesamis told me himself the same thing; Jack said so himself, that he was leaving everything with Garbin and with the Robinson, Magids and Company; I saw Garbin at Kiana in the winter after the settlement of 1910. I do not remember that Garbin said to me at that time that he wanted all his money or that I told him that Tyapay and Lesamis had paid their share of the two thousand dollars. Garbin got his money the same day as the settlement. I did tell Garbin in Kiana that Tyapay and Lesamis had paid their share of the two thousand dollars; I don't remember that I said he should do likewise.

In regard to the eleven hundred and fifty-eight dollars from Frank Lesamis, I remember something about Jack Lesamis asking if we could not extend him credit to pay his labor—said they were short of money, and that I told him I couldn't extend him any further credit on that account; he said then he would get it from his brother, who had quite [160] a little money, and for me to take it and to put it on the company's books to help pay up the labor, and he turned the money over to me. The money was in a strong-box. I don't remember who took it out;

(Testimony of H. Greenberg.)

everybody was handling it, so far as I know. Lesamis got the key from Andy Garbin; he got the key and they took the gold-dust out from the strong-box. I don't know who it was done it exactly, but I know Lesamis got the key to take the dust out of the strong box, some way, and gave it to me to take down to the store.

I gave Lesamis credit for it on the books—on the books of the Robinson, Magids and Company. I couldn't say whether it was charged up to the account of the Klery Creek Mining Company or the credit of the Klery Creek Mining Company. Jack Lesamis gave it to Robinson, Magids and Company to pay the debts with; Lesamis turned it over to me and I turned it over to them; I know Jack Lesamis said it was his brother's, and he said he borrowed it from his brother.

Before Robinson, Magids and Company got this money Frank Lesamis asked me for his money; I would not give it to him. I knew it belonged to him, but his brother had got it as a loan. I don't know who it belonged to. I know he demanded it but how should I know it belonged to him. Frank Lesamis said, "I want my money."

The eleven hundred and fifty-eight dollars gold-dust were the proceeds of gold-dust extracted from the Star Claim; Jack Lesamis got it as a loan. When he turned it over to me that is what he said when he gave it to me, he said to take it to help pay the bills.

[161]

When Frank Lesamis made demand upon me for

(Testimony of H. Greenberg.)

his share of the money taken from the safe. I did not say to him I would kill him; he said, "I am going to kill you; you took my gold. I want you to give me my gold-dust." This conversation was in the Kiana store; Stuart Fleming was present.

I did say to George Stanley, "It looks as if you wanted a lawsuit." When I went to Klery Creek in 1911, I did not order Garbin off the ground nor Jack Lesamis, or say that the ground was mine.

The reason for taking this second deed was that there was no acknowledgment on the first one, that was the only reason. Another reason was I had heard that they were not getting along up there on the creek as they should. I had heard that they were going to ruin the company and I was down in Kiana; it was fifteen miles away and from the way things looked it was likely to cause trouble; we were getting orders right along and no proceeds were coming in, and I was under the impression that it was the safest thing to do; Jack Lesamis brought in the first order and while he was there he repeated to me some things from the creek, and I thought it would be the safest thing to do would be to get a new deed. He said things are not going along as they have a right to do, and Moran advised me if I wanted to have this deed recorded the only thing to do was to have it acknowledged in proper form, and I thought I would have a new deed.

I stated in my direct examination that the only properties and assets of the partnership were these mining claims and some tools and cabins. Now, at

(Testimony of H. Greenberg.)

the close of the business in 1911 I didn't know how many provisions the partnership had. Mr. Fleming took stock, but I don't remember just [162] how much it was; I think it was about two thousand dollars worth. They were left with Lesamis and Garbin to take charge of; the instructions was that they were to realize what they could from what they could sell and turn the money over to Robinson, Magids and Company, who would give them credit for it, and any balances they might have left, after paying up any debts they have, any money they will derive, it would be taken to their account and they will be given credit for it; they could use what they needed and sell what they could, and then they would give credit for any money over, if anything is left, and we will charge the same to the account of the company, for that is all I can tell you, that when I left I left it *all them* and they can have it all if they want to.

This instrument exhibited to me is an affidavit for attachment. [(?) injunction] I did state in that affidavit that at all times between the 19th of March, 1910, and the 10th day of August, 1911, that said partnership conducted their mining operations and that said Stanley and Sallo are claiming that they are entitled to the first twenty-four thousand dollars gross output from the said Klery Creek Mining Company's claims without any regard to the operating expenses; that it was the intention of the formation of the said Klery Creek Mining Company of a copartnership that the expenses of operating

(Testimony of H. Greenberg.)

should be deducted and thereafter the net profits paid to the defendants Lesamis, Tyapay and Garbin, until they received the total sum of twenty-four thousand dollars; and at all times between the 19th day of March, 1910, and the 10th day of August, 1911, the said copartnership conducted their mining operations with that understanding, and during the summer of 1910, after paying [163] expenses of operating, the said defendants received about the sum of five thousand dollars, leaving a balance due the said Lesamis, Tyapay and Garbin of about nineteen thousand dollars payable from the first net profits and after all the present indebtedness of the said Klery Creek Mining Company is paid.

I did testify while on the stand that there were certain moneys and such assets as tools, etc., set aside for the payment of the expenses of future mining. I also testified that there was certain moneys taken from the cleanup of 1910 operations which were set aside for the payment of expenses of future mining; and I also testified that I paid Tyapay, Lesamis and Garbin certain moneys.

Now, when I mentioned this five thousand dollars having been paid, being a reduction of the twenty-four thousand dollars, I mean that this sum of five thousand dollars constituted the same moneys that were to be applied to the future expenses—the moneys that I paid to them individually.

(Paper shown witness.)

This is a charge to the Klery Creek Mining Company, three days carrying gold-dust one hundred

(Testimony of H. Greenberg.)

dollars and forty dollars for gold scales, charged to the company. Yes, I know now; I recollect, I carried the gold-dust to Nome; I recollect I carried it myself; I didn't remember until you showed me that. I don't remember the amount of gold-dust I deposited; I don't remember that I charged one hundred dollars for carrying gold-dust to Nome. I came with dog team; I came as far as Candle and when I left Candle they suggested to me that if I was coming to Nome, that the strong-box with the gold-dust should be brought to Nome. One hundred dollars was to be charged to me and one hundred dollars to the Klery Mining Company. We [164] had lots of dogs to feed and I consider that was a very reasonable charge; I don't know exactly if I was coming to Nome anyway that fall. I expected to get out some time later.

I testified that some leases were given to various parties of properties owned by the Klery Creek Mining Company; also that I was entitled to royalties which might come out of such leases; and I further testified that I am not entitled to anything until the twenty-four thousand dollars is paid—I mean any of the profits of the clear profits of the ground. I didn't collect any royalties; I know nothing about it. I don't remember anything about whether Robinson, Magids and Company had instructions to collect royalties for me, for my quarter interest in these properties; I don't know if they did. We were three equal partners in the Robinson, Magids and Company; my partners received the same amount as

(Testimony of H. Greenberg.)

I did; I have not had an accounting with Robinson, Magids and Company during the last two years. I don't remember if I bought any gold-dust from the boys when I saw them in the winter of 1910. I might have and I might not; gold-dust is no luxuries to me. I don't think there has been any mining done by myself since the summer of 1911 up there on these claims nor by the Klery Creek Mining Company that I know of. Tyapay was either in the States or in Europe during the summer of 1911; Lesamis was here in Nome in July and first part of August, 1911, when I went up the creek. I don't know if he took any part in the mining on No. 1 on Klery Creek in the summer of 1911.

Redirect Examination.

The charge of a hundred dollars for the trip to Nome [165] was a reasonable charge; I think it was worth about five hundred dollars; we were entitled to that much any way; I hired a dog team, went across by Candle; I did not charge that up against the company; I paid two hundred dollars for the dog team.

I said the boys on Klery Creek were living on a fish diet; I ascertained that from what they told me, and what I saw myself; we were up there for two days and they didn't have any meal except when they had fish; I didn't ask them myself nor I didn't go and visit their cache to find out.

The Oregon association claim had not been staked when I entered into that agreement to furnish the Klery Creek Mining Company. Tyapay,

(Testimony of H. Greenberg.)

Lesamis and the other partners were locators of the Oregon claim. I was staked in as one of the locators; there was no individual interest by reason of my location other than as a member of the Klery Creek Mining Company; it was all done under the partnership agreement; that is what I referred to when I spoke of getting the leases.

Now, in regard to that mortgage: When Tyapay asked me to loan him three thousand dollars, the amount of the mortgage was three thousand dollars, though I only advanced one thousand dollars—I will explain that; Mr. Tyapay arrived here in Nome in 1910; his intention was to quit the country; he was going outside to get married; he asked me if I would let him have three thousand dollars and then I would have to deduct that sum from his property when it is taken from the claims; I told him I could not give him three thousand dollars, but I will give you a thousand dollars, and you will give me a mortgage for three thousand dollars, and I will give you two thousand [166] dollars later on; that we will have lots of money coming in later on and I can do that; he said, “All right, you can do that; you can give me a thousand dollars now, and provided I am short of money you can send me the two thousand dollars later on, and I will sign you a mortgage now for the three thousand dollars, and I was to send him more money just as soon as I can and so he signed it; that is why the amount was fixed at three thousand dollars. No, I never sent him any money afterwards; I never got any more from the Klery

(Testimony of H. Greenberg.)

Creek; I didn't have any more money to send him; I never got any more myself. When the mortgage fell due I foreclosed it; I don't remember if I was here at that time or not; I remember it was foreclosed for me. I did not claim he owes me only what I loaned him one thousand dollars; I am more than willing to accept what I loaned him, regardless of the amount of the mortgage; I am willing to deed his interest any time he pays back the money I loaned him.

At the time I made that affidavit for attachment dated October 30th, 1912, I was not able to ascertain the exact amount that was paid to them.

Speaking about the work that was done on these various properties mentioned in the complaint, the work done by the Klery Creek Mining Company besides No. 1 Above and the Star Association, was work on several claims—built some camps on Klery Creek and done some prospecting and assessment work, about eight hundred dollars in value; this work was done on Klery Creek; it was done on some creek claims and also on some benches—several claims in that vicinity—claims described in the complaint.

Recross-examination.

I don't know that any mining was done on any claim [167] except No. 1 Above on Klery; I wasn't there; I have not been on the ground since 1911; I have not collected royalties from these leases, maybe Robinson, Magids and Company did.

I verified the complaint in that three thousand dollar foreclosure suit, and the judgment was en-

(Testimony of H. Greenberg.)

tered for the full amount. I admit that that judgment against Tyapay is wrong in amount. I am willing to deed it back to him after he pays this debt in three, four or five years.

Redirect Examination.

They did not fulfill their agreement with me when they staked me in giving me a quarter interest with them; the agreement does not speak that they were supposed to stake in anybody else; that is not what *what* we agreed to; they didn't stake me in for a quarter interest.

[Testimony of Martin Moran, for Plaintiff.]

MARTIN MORAN, called as a witness for plaintiff, testified as follows:

I resided at Kiana in June, 1911; the writing in this instrument is mine; this is the letter referred to in the deposition of Andrew Garbin and which Mr. Garbin asked me to write; I wrote what Mr. Garbin authorized me to or asked me to write.

Letter offered in evidence marked Plaintiff's Exhibit "I," as follows:

[Plaintiff's Exhibit "I"—Letter, Dated June 14, 1911, ——— to John Lichtenberg.]

"Kiana, Alaska, June 14th, 1911.

Mr. John Lichtenberg,

Keewalik, Alaska.

Dear Sir: Send the following telegram at your earliest chance:

Greenberg, Lesamis and Tyapay, care Bessie Store, Nome. Send forty men to our camp on Klery. No men to be had here. Andy Garbin." [168]

[**Testimony of H. Greenberg, for Plaintiff
(Recalled).]**

H. GREENBERG, recalled for plaintiff:

Mr. Lichtenberg was in Keewalik, eight miles from there; there was no telephone at Keewalik; we had to go down to the agent at Keewalik for transmission.

(Telegram, Plaintiff's Exhibit "F," offered and received in evidence, same as Exhibit "F" for identification.)

I received this telegram at the Bessie store about July 7th; I went to the hotel and had a conversation with Lesamis about sending men; he was in town yet; Tyapay left the day before that; yes, Lesamis consented to send these men; he said, "Send them; he must know what he is talking about; send them by all means." I hired some men, bought them tickets, paid their fare on the boat and sent them up; I think thirty men; I don't remember. The company, Robinson-Magids, paid the fares; they left from Nome; I think Philip Murphy bought the tickets; he is the agent for Robinson, Magids and Company; he was at the Bessie store in Nome.

Q. How did Robinson, Magids and Company happen to buy the tickets?

A. Well, they furnished the money for Klery Creek Mining Company to buy the tickets.

Q. At whose request?

A. Andy Garbin's request.

Q. Did he say anything about it in that telegram to send men; did you act on that telegram or did

(Testimony of H. Greenberg.)

Robinson, Magids & Company act?

A. Mr. Lesamis acted on the telegram.

Q. Who hired the men, you or Lesamis? [169]

A. Both of us; when I got that telegram I went out to find Lesamis and he came down to the store with me and just talked about it there, both of us together, at the store, both of us there.

Q. What instructions did you give Murphy?

A. I don't remember.

Q. Do you know what instructions Lesamis gave him?

A. I don't remember; I don't know anything about it. I don't recollect what he gave to him.

Q. Where was the amount of the fares charged, at the Bessie store?

A. I don't remember where they was charged.

Q. Was it ever charged on the books of the Klery Creek Mining Company?

A. Maybe; I don't know.

Q. You don't know anything about it?

A. I don't.

Plaintiff offered in evidence a part of the depositions of Andy Garbin as follows:

[Deposition of Andy Garbin (Part of).]

I gave Greenberg the gold, Izzy Brovda, wrote a receipt, gave it to Greenberg and he handed it to me.

Receipt referred to reads as follows:

“Candle, Alaska, —, 19—.

Robinson, Magids & Co.

Four hundred and fifty oz received of Klery Min-

(Testimony of George Stanley.)

ing Company A. Garbin H. Greenberg, John Tyapay, Jack Lesamis, four hundred and fifty oz gold dust to be applied on account after assay.

ROBINSON, MAGIDS & CO.,

Per I. PROVDA."

Witness excused. [170]

[Testimony of George Stanley, for Plaintiff.]

GEORGE STANLEY, sworn and testified for plaintiff:

Direct Examination by Mr. GILMORE.

I am one of the defendants. Ten or twelve leases were let in the fall of 1911. I have personally collected some royalty under such leases. Sam Sallo may have collected some. I collected about \$1300.00 for myself and the boys I represent. From claims mentioned in the complaint. I will prepare a statement.

Cross-examination by Mr. LOMEN.

The \$1300.00 royalties collected by me was one-half of the royalties. That represented the interests of Sallo and myself. Mr. Levy collected the balance. He represented Tyapay and Greenberg.

Witness excused. [171]

[Testimony of Sam Magids, for Plaintiff.]

SAM MAGIDS, a witness for plaintiff, testified as follows:

My business is general merchandise. I am a member of the firm of Robinson, Magids and Company; I am acquainted with all of the defendants in this case; got acquainted with them about eight

(Testimony of Sam Magids.)

years ago; I was present on Klery Creek about the 19th day of March, 1910; Lesamis, Tyapay, Garbin, Greenberg and I were present. I was present when negotiations toward forming a partnership were had; I heard what was said on both sides; they were dickering there for a night and a day or two days; they were explaining that they were in need of money—had no money to go ahead and develop the ground—I mean Tyapay, Garbin and Lesamis, they asked Greenberg and me to extend them credit; this was refused; finally they made an offer to sell one-half of the ground and after talking it over finally came to an agreement; Mr. Greenberg was to furnish supplies up to July 10th; they offered Greenberg a quarter interest in the ground; he pays them two thousand dollars in supplies up to July 10th, then six thousand dollars and twenty-four thousand dollars out of the profits of the ground. Garbin, Lesamis and Tyapay were to have charge of the working and handle it to suit themselves; writings were made out and signed; I wrote the instruments; the instruments offered in evidence, a memorandum and deed; I wrote them; there was no lawyer in the vicinity; I signed as a witness; Henry Bernhardt also signed as a witness. We left the morning after these instruments were signed, Greenberg and I; they gave him an order for goods to cover the two thousand dollars; the goods were sent from Candle; no charge was made for these goods against the Klery Creek Mining Company or the defendants.

I was at Candle during the summer of 1910; I went

(Testimony of Sam Magids.)

to Kiana the last of September, 1910; I was not there when the [172] Klery Creek Mining Company concluded their operations that fall; I was present sometime in December when one settlement was had between Garbin and Mr. Greenberg; that was after Mr. Greenberg had got back from Nome; I participated in the adjustment or settlement of their mining operations; I made a statement for them showing the total gross amount of gold taken out and the total expenses of their mining operations; this statement I figured out for Mr. Garbin and Mr. Greenberg to show how much money Mr. Garbin had coming to him on his third profit of the mining from the Klery Creek Mining Company; Mr. Fox was also present; Mr. Garbin was satisfied with this adjustment; he accepted it as correct; we settled with him right there on that basis; Greenberg was satisfied with it; I got my figures from the Klery Creek Mining Company's books; I got the figures off the books; Mr. Fox kept the books.

The gross amount of gold taken out by the Klery Creek Mining Company during the summer of 1910, was sixteen thousand three hundred forty-one and forty-two hundredths dollars; the gross expenses was eight thousand fifty-nine and $75/100$ dollars; the net profits for all summer's mining was seven thousand three hundred ninety-one and sixty-two hundredths dollars. As to what was to become of this seven thousand dollars, well, the instructions from Mr. Greenberg, it was supposed to be turned over to the three men; it was to be divided up be-

(Testimony of Sam Magids.)

tween these three men; Garbin said it was to be divided between the three; he claimed one-third of the profit, Tyapay and Lesamis were to have their two-thirds; they did not claim one-third of the gross; the amount *that paid* over to Garbin at that time was close to two thousand dollars; Garbin demanded that his third should be paid to him; at that time there was an arrangement made between Greenberg and Mr. Garbin as to the future operations of the company's [173] properties; they made a contract with Robinson, Magids and Company to deliver two thousand dollars worth of merchandise to be used during the winter and the next coming year on the Klery Creek Mining Company's ground, for which they were to pay two thousand dollars cash in advance; Mr. Garbin told me about this agreement; his statement for the goods they wanted for this two thousand dollars was made out and given to me by Mr. Garbin in writing; I think we have that statement in Nome now; I think the bill amounted to more than two thousand dollars; I gave Mr. Garbin, Robinson-Magids Company's check for thirteen hundred eighty-five and no one hundredths dollars, and he agreed to give me six hundred sixty-seven dollars of that, paying his third *pro rata* of the two thousand dollars; and he also kept money to the amount of one hundred twenty-seven and nine hundredths dollars. The whole amount that Garbin received was twenty-one hundred seventy-four and twenty-one hundredths dollars out of the profits. The check for one thousand three hundred eighty-

(Testimony of Sam Magids.)

five dollars dated December 22d, marked Plaintiff's Exhibit "K" for identification has the endorsement of Robinson, Magids and Company; Garbin did not wish to collect that check until later when he came over to Candle or Kiana; I should say he didn't want to write a check, so he gave me the check for this amount and I cashed it at a later date; then he went up the creek and I took the check away with me and I could have the check cashed without the endorsement of Mr. Garbin.

(Witness shown another check.)

This is the check that Mr. Robinson gave to Mr. [174] Garbin on April 17th instead of the check I gave him at Kiana in order to correspond with the Robinson, Magids Company's books; this is Andy Garbin's endorsement on that check; I was not present at Candle myself, but I testify because my journal shows the entry, the entry of Robinson, Magids and Company shows exactly the checks.

The checks referred to were received in evidence, marked Plaintiff's Exhibit "J" and "K." [175]

[Plaintiff's Exhibit "J"—Check.]

Candle, Alaska, Dec. 20th, 1910. No. —.

MINERS AND MERCHANTS BANK
of Candle.

Pay to Andy Garbin or order \$1385.00—Thirteen
Hundred & Eighty five Dollars.

ROBINSON, MAGIDS & CO.

By SAM MAGIDS.

Paid Apr. 12, 1911.

ROBINSON-MAGIDS CO.

Per. R.

(Testimony of Sam Magids.)

(On back of check:)

Paid Apr. 12, 1911.

ROBINSON-MAGIDS CO.

Per. R.

[Endorsed]: #2345. Greenberg vs. Lesamis et al. Plffs. Exhibit "J," for Identification. Sept. 16, 1913. J. Sundback, Clerk. By J. A. B.

#2345. Greenberg vs. Lesamis et al. Plaintiff's Exhibit "J." Filed Sept. 16, 1913. J. Sundback, Clerk. By J. A. B., Deputy. [176]

[Plaintiff's Exhibit "K"—Check.]

Candle, Alaska, April 12, 1911. No. 592.

MINERS AND MERCHANTS BANK

of Candle.

Pay to Andy Garbin or order \$1385.00—Thirteen hundred Eighty five #——— Dollars.

ROBINSON, MAGIDS & CO.

By H. ROBINSON.

For ck. of Dec. 20/10.

By SAM MAGIDS.

(Miners & Merchants Bank. Apr. 13, 1911. Paid.)

(Endorsed on back of check:)

ANDY GARBIN.

[Endorsed]: #2349. Greenberg vs. Lesamis et al. Plaintiff's Exhibit "K." Filed Sept. 16, 1913. J. Sundback. By J. A. B., Deputy. [177]

The amount of money in cash that Mr. Garbin kept at the time of this settlement was one hundred twenty-seven and nineteen hundredths dollars; the amount of his share paid for groceries was six hun-

dred sixty-seven dollars, and the amount of the check is thirteen hundred eighty-five dollars:

Statement received in evidence marked Plaintiff's Exhibit "L," as follows: [178]

[Plaintiff's Exhibit "L"—Statement.]

		8959.75	
294 50	Tyapay	248 50	
1225 75	Lesamis	207 25	
404 50	Garbin	208	9000
1926 93		205 25	1000
685 00	R M Co.	208 25	2000
		<hr/>	
176 00		208 25	12000
454 50	Quillan 139	208 75	1400
		<hr/>	
883 70	Fox-9/20 @		
12/24		209 75	13400
111 62	Millen	210 25	1500
not exp- 38 00	Stanley &		
	Johnson	206 25	
390 25		198 75	2000
		625	
339 50		138 25	
15		5 50	
189 75		80	800
		<hr/>	
		395	
30 00		2543 00	
480		39 5	
83 80			

252 50

7981 30

7981 30

2543 00

10524 30

598 [179]

Joe Quillan	454 50
W. W. Fox.....	58 50
K. M. Co. by John Tyapay.....	685 50
John Millen	111 62
Mke Joyce	135 25
James Flood	335 00
W. W. Fox.....	15 00
James Flood	40 00
John Agusarof	232 75
Mke Gussof	208 75
Mike Agussarof	207 25
Geo. Gussoff	193 75
Tim Buzzof	205 25
Sam Buzzof	206 25
Mike Arsoff	103
Geo. Cozoff	198 75
Pete Minzie	239 75
Pet Arsoff	207 50
Andy Solomon	192 50

4030 87

4030 87

Sam Asof	191 00
Chas. Matusa	225 00
R. H. Fox	580 00

John Tyapay	292 50
Jack Lesamis	1225 75
Ike Hobson	1 80
R. M. Co.	1841 83

8388 75

Andy Garbin	395 00
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8783 75

Iron Box	36 00
Carrying Gold-dust by H. G.....	100 00
1 Gold Scale	40 00

8959 75

[180]

23 $\frac{3}{4}$ Money to Moran 65425

40 $\frac{1}{2}$ 3

40 oz to Moran 726 80

38 $\frac{1}{4}$

7 oz Nugget to Garbin 127 19

52 2

Assay by H. Greenberg

12 $\frac{1}{4}$

15497 43

179

16351 42

120 $\frac{1}{2}$

79 $\frac{3}{4}$

42

15497 43

128 $\frac{1}{4}$

8959 75

46 $\frac{1}{4}$

3) 6537 68

(Testimony of Sam Magids.)

27	$\frac{1}{2}$			2179	22
21	$\frac{1}{4}$			127	19
				<hr/>	
25	$\frac{1}{2}$	1		2052	03
				<hr/>	
			3)20.00		
			<hr/>		667
7			18	667	
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			20	<hr/>	
			<hr/>		1385
900	$\frac{3}{4}$	6	20	1385	
				<hr/>	
47				2052	
<hr/>				<hr/>	
853	$\frac{3}{4}$	6		08	
36				2001	
<hr/>					
817					
1817					
40	7				
<hr/>					
72680	12719				

[Endorsed]: #2349. H. Greenberg vs. J. Lesamis et. al. Plaintiff's Exh. "L." Filed Sept. 16, 1913. J. Sundback, Clerk. By J. A. B., Deputy. [181]

I returned to Kiana about February; during this time there was work done by the Klery Creek Mining Company; Garbin had charge of one camp on Center Creek; they were prospecting and doing assessment work; Bob Fox had charge of the Beer Creek camp, Stuart Fleming came over from Nome and took charge of the work; I went to see them a few times;

(Testimony of Sam Magids.)

I do not know the claims they were on; they worked in several places doing assessment work and prospecting. In November I went to Candle and from there to the outside; I had charge of the store at Kiana while there; Mr. Levy kept the books.

The rest of the profits for 1910, not paid to Garbin, was paid to—two thousand three hundred ninety-three and eighty hundredths dollars to Jack Lesamis and six hundred sixty-nine dollars, which was his share of the two thousand dollars outfit deducted from that; seven hundred twenty-six dollars and some cents that he loaned to Moran was also charged to him on the company's books; of the balance John Tyapay received two thousand dollars cash at the Candle Store, six hundred sixty-seven and thirty hundredths dollars out of the two thousand dollars which Tyapay should pay as his part in the fall of 1910, that consumed the entire profits—no, there was a balance of about one hundred fifty-one and sixty-two hundredths dollars which they still had coming from the Robinson, Magids Company to make up the seven thousand three hundred and sixty dollars; this balance has been used up in the works during their mining operations. Greenberg received no part of said profits.

I met Mr. Lesamis at Kotzebue on my way to Kiana that fall in 1910; he told me he was not going to go back any more until he got rid of his partners; he was waiting at Kotzebue [182] for Greenberg to go outside; he told me that he had more than two thousand dollars, twenty-two hundred dollars, I think,

(Testimony of Sam Magids.)

coming to him from the profits of that year; that he was going outside; that he was going to get Greenberg to give him money to go out with. I told him, "I will give you a note to Mr. Robinson for himself and Tyapay, because I knew they had about three or four thousand dollars coming out of the profits of that year; for him to give it to Mr. Greenberg when he got to Nome and he will advance you the money to go out." I sent down the note written to H. Robinson at Candle, I know that this three thousand dollars, one thousand to Lesamis and two thousand to Tyapay, was afterwards paid according to that note.

I got back to Kiana in the fall of 1911 after operations had ceased; I met Garbin, Lesamis, Stanley and Sallo there then; we had a conversation looking toward an adjustment of the Klery Creek Mining Company's affairs; we had several talks; this was before this suit was started; I understood that Garbin and the others had transferred their property and I asked them about it, they told me I was wrong; they told me the property was transferred in trust for them until matters could be settled up; they offered to settle with me on a certain basis: Stanley on behalf of Garbin's interest offered me fifteen per cent and twenty per cent royalty that was given on the leases; he offered me representing Robinson, Magids and Company, and to give me security on the ground; they did not then dispute the Klery Creek Mining Company's indebtedness; they did not contend that the Klery Creek Mining Company had derived any profits that summer. [183]

(Testimony of Sam Magids.)

Cross-examination.

At the time of the agreement between Greenberg and the defendants Lesamis, Tyapay and Garbin, we went over to see what there was in the strike on Squirrel River and to collect some accounts, and we had in contemplation the starting of a store in Kiana if the strike would show up good. We found Lesamis, Tyapay and Garbin on Klery Creek; I went to their cache occasionally for dog feed; they had a good supply of provisions in some articles; they had flour; they did not have a good supply of provisions; they lacked everything with the exceptions of flour; I am positive about that; it didn't take a man long to see what kind of an outfit they had that has been handling groceries for years; they might have had groceries that I didn't see; I didn't see anything; I saw there was fish and plenty of flour.

I believe Mr. Greenberg got about fifty dollars worth of gold-dust from them; there was no agreement drawn up whereby they was to sell Greenberg a half interest; Bernhardt got there the afternoon when we were ready to sign up the agreement; I don't remember which agreement was signed first; I don't remember that we had any conversation as to the terms of the partnership after the agreements were drawn; the conversations and understandings were concluded before the instruments were drawn; they came to a full understanding.

Q. Why didn't you embody in the partnership agreement the terms of the partnership?

A. I asked a good many times if that was the agree-

(Testimony of Sam Magids.)

ment before, *before* to make it more plain, and Mr. Garbin and Mr. Lesamis spoke up and said, "We understand that we are to [184] get twenty-four thousand dollars after the expenses are deducted; we don't expect you to pay before the expenses are deducted"; those are just the words *they* were used.

Q. Was the twenty-four thousand dollars mentioned in the partnership agreement?

A. It was mentioned in the deed.

Q. What has the deed to do with the partnership agreement?

A. I am not lawyer enough to know that, Mr. Lomen.

Q. Now, if the agreement, if everything is stated in the agreement, what was the purpose of drawing up a deed?

A. I suppose it was for the purpose of showing that Mr. Greenberg was to give them supplies up to July tenth.

Q. What else was the agreement to show?

A. It simply shows the partnership.

Q. How long was the partnership to last?

A. As long as they could get along, I suppose.

Q. Just as long as they wanted it? A. Yes, sir.

Q. How much should each individual put into the partnership?

A. There was no special amount stated, but I understood that he was to pay them six thousand dollars in cash and they were to have twenty-four thousand dollars out of the profits that would come out of the ground.

(Testimony of Sam Magids.)

Q. What were they to get the twenty-four thousand dollars for?

A. For the ground, it originally belonged to them, I [185] suppose.

Q. What did they give for this thirty thousand dollars?

A. They were to give Mr. Greenberg a quarter interest; they gave him a deed supposing they were to get twenty-four thousand dollars out of the ground.

Q. Now, was there anything else that Greenberg was to get for the thirty thousand dollars?

A. He was to get the profits off the one-quarter interest.

Q. Now, what were the boys going to do on their part to offset the groceries furnished by Greenberg?

A. They were to go ahead prospecting the ground until July.

I was not present in the fall of 1910 when the boys came to a settlement at the conclusion of the mining in 1910; I did not hear Greenberg's testimony in regard to the settlement at the close of the season in 1910; I understand there was no settlement made; they simply brought the gold-dust down. Garbin told me, also Lesamis, that there was no settlement; they told me they had left the gold-dust when they got back to Nome; then Garbin and I got together and settled up just to see how much they had coming; they knew they had approximately two thousand dollars apiece coming.

At the time I held back six hundred and sixty-seven dollars of Garbin's money, I did not strike a

(Testimony of Sam Magids.)

balance from the Klery Creek Mining Company's books; I did not tell him that Tyapay and Lesamis had paid their share toward the two thousand dollars of groceries; this six hundred and sixty-seven dollars became a charge against Tyapay and Lesamis about the same time [186] the goods were being delivered to them; when I made an entry. I had authority under their own agreement; Mr. Greenberg himself told me; I was present when Garbin told him; I was not present when Lesamis and Tyapay agreed that so much was to be held out; I only know what was told me by Greenberg and Garbin; Greenberg says, "Sam you will hold off all told two thousand dollars to be used for heavy staples for the Klery Creek Mining Company, for future delivery for the mining operations next summer and for their outfit this winter."

Lesamis received \$2,393.50 from the profits of 1910, of which he received a thousand dollars in Nome; he also received seven hundred twenty-six dollars and some cents, which he loaned to Martin Moran; I mean it was charged up against him; he took the money and turned it over to the third party; he took the money belonging to the Klery Creek Mining Company, which was made a charge against him on our books; he took it during the summer of 1910; Mr. Moran admitted that he got the money; Moran told me Jack Lesamis gave it to him; Garbin told me it was a private loan between Jack Lesamis and Martin Moran; I don't remember having seen a charge against Moran on the Klery Creek Mining Com-

(Testimony of Sam Magids.)

pany's books; in the settlement we figured it as against Jack Lesamis; I didn't examine what assets they had in their books; Andy Garbin told me to make that entry against Jack Lesamis; he said that he would not stand for that loan because Lesamis gave Moran that money without consulting the other parties; Garbin said he would not stand for any part of it; Tyapay would not stand for any part of it, naturally it was charged to the man who loaned the money; I know about Tyapay not standing for any part of it, because I asked Tyapay when he was on his way to Nome; he was in Keewalik; [187] he told me that Jack Lesamis took and loaned the money to Martin Moran; I charged the six hundred sixty-seven dollars to Lesamis because he agreed to pay it; he told me that at the time we met at Kotzebue before he took the boat for Nome. He told me Robinson, Magids and Company was supposed to hold back one-third of the three partners' share, Tyapay, Garbin and Lesamis; \$2,000.00 for the three for next year's operations.

Garbin gave the order for two thousand dollars worth of groceries, after he came back from Blossom about the last of November or the first of December; I think we sent them up to No. 1 and they were stored there in the company's house. Some of the orders were signed by Garbin, some by R. H. Fox and some signed by Stuart Fleming; the order for the two thousand dollars was given at one time for the heavy staples, like flour, sugar and so forth.

Q. When was any sum charged up against Mr.

(Testimony of Sam Magids.)

Greenberg for his share of the two thousand dollars?

A. You see that two thousand dollars was being put up by, as I understand them, for the next year's operations; after they settled up their workings that season, and whatever profit was left Mr. Garbin, Lesamis and Tyapay was to get that six hundred sixty-seven dollars apiece that they put up back, see. They were to contribute towards the work but it was to be held back and they were to get it back if they worked at a profit, being simply the sum that Greenberg had loaned the Klery Creek Mining Company in the start, over two thousand dollars to carry on their works.

Q. What did Greenberg advance?

A. Well, he advanced, or Robinson, Magids and Company advanced a line of credit. [188]

Q. Well, they didn't need any credit if they paid cash? A. They certainly did.

I don't know when they came to an agreement about the partnership name; I couldn't say for certain that it was at the time the agreement was drawn.

I think R. H. Fox was mining on the Oregon claim after the leases were made; I think he turned over certain royalties to Robinson, Magids and Company, who credited the Klery Creek Mining Company with them.

My instructions from Mr. Greenberg was to turn over this seventy-three hundred dollars or whatever it was to Mr. Garbin, Mr. Lesamis, and Mr. Tyapay, and to apply it to the twenty-four thousand dollars, which they had coming out of the profits of the

(Testimony of Sam Magids.)

ground, and I done so according to our books, so really Mr. Greenberg didn't pay thirty thousand dollars for a one-fourth interest as I understood it; I understood so then and I understand it *it* now the same way; he was to pay them six thousand dollars cash out of his own pocket and twenty-four thousand dollars balance they was to get provided the ground paid it; he was to pay it providing there was twenty-four thousand dollars profits came out of the ground, I received some royalties under those leases, this being under separate owners; I received altogether twelve or thirteen hundred dollars in royalties; of that I have given the Klery Creek Mining Company credit for two hundred dollars; that is all that belonged to them; I don't know to whom the gold-dust deposited with the Miners & Merchants' Bank in 1910 was credited; the gold was taken down here to Nome and it was transferred to Robinson, Magids and Company's account; I think [189] that was the way it was done; they got credit for it at Robinson, Magids and Company's, and they have drawn against it anyway; I could not tell you exactly how that was done.

Jack Lesamis took charge of all provisions and tools for the mining season of 1911 and he was supposed to have sold that stuff and whatever money was realized, to turn it over to Robinson, Magids and Company, who were to credit it back to the Klery Creek Mining Company; Greenberg told me they should be credited with that; I don't think anything was turned in.

(Testimony of Sam Magids.)

Redirect Examination.

Q. Mr. Magids at the time you drew this memorandum agreement and that deed on the 19th day of March, 1910, why did you not put in one of those instruments the fact that this twenty-four thousand dollars should be paid out of the net profits of the ground?

A. Well, I was going to put that in and he said, "Don't put that in, *he was* that simply will be confusing; we understand that thing very well amongst ourselves; there is no other people interested in it, and we know that we expect that twenty-four thousand dollars is to be paid out of the net after the expenses is paid."

Mr. Garbin and Mr. Lesamis and Tyapay told me the same words.

[Testimony of H. Greenberg, for Plaintiff
(Recalled).]

GREENBERG, recalled for plaintiff, testified:

Robinson, Magids and Company have no interest in the Klery Creek Mining Company and never had. I am liable to my partners personally for the indebtedness of the Klery Creek [190] Mining Company; it was all charged up to me personally.

Stanley, Lesamis, Garbin, Sallo and Tyapay represented to me that they were insolvent; they said they had no money; I had no conversation with Tyapay as to his assets; with the others I did; they said they had nothing outside of their mining properties.

(Testimony of H. Greenberg.)

Cross-examination.

Q. What became of the gold-dust?

A. Well, the gold-dust was held by the Klery Creek Mining Company altogether as an asset and then it was handed to me to be sent down to be assayed; I don't know who at the store collected the money, but it was sent down as an asset of the Klery Creek Mining Company to show how much they *they* had coming apiece, and Robinson, Magids and Company gave them credit for it to show, after the bills was paid, what balance they had coming to them. I don't know who gave it to me, but the men at the mine anyway, to bring to Robinson, Magids and Company; then later they deducted their balance which was coming to them and then gave the Klery Creek Mining Company credit for the balance; that is how they got the profits for the year 1910.

The gold-dust reached the bank and they gave credit in money to Robinson, Magids and Company's store; I don't remember if Robinson, Magids and Company had credit in the Bank for this gold-dust; we credited them with the balance that was coming to them; it is on the books. [191]

[Testimony of W. L. Levy, for Plaintiff.]

W. L. LEVY, a witness for plaintiff, sworn and testified:

Direct Examination.

I am clerking for Robinson-Magids & Co. at Kiana. I have no interest in the company. I have been there since the fall of 1910. Mr. Garbin lived there in the winter of 1910 and 1911. Mr. Fleming was there

(Testimony of W. L. Levy.)

that winter. He was superintendent for Klery Creek Mining Co. He did some prospecting on various claims and finally opened up on No. 1 Above. He was continuously employed. Garbin was the only one of the partners who was present during the winter. There were six employees. In the summer there were more. I kept the books for Robinson-Magids & Co. Stuart Fleming kept the books for Klery Creek Mining Co. The Klery Creek Mining Company purchased their provisions and supplies at our store. The time checks were paid at our store. I kept those items. The expenses during that winter until the season of 1911 opened was \$500.00 to one thousand dollars, advanced at the store for provisions, tools and labor. Garbin and Fleming carried on the work together till I left in August, 1911. I was not on the creeks. I did not see Garbin often. He would come to Kiana, talked to me about what he was doing, that he was making suggestions as to the manner the work should be done and he left Fleming do the work. With reference to Fleming he said: "I don't know what to do about Fleming. If Greenberg was here he would not stand for the way this man was doing. Greenberg sent him up. I am the only one of the partners and suppose I will be held responsible for what is done. If we fire him we can't get a man in his place. I think that would be the best thing to do." Another time he said: "What do you advise?" I said, "I have no power over him." Garbin said that Fleming antagonized him, paid no attention to him. In none of the conversations did

(Testimony of W. L. Levy.)

he represent that he had no interest in the mining in any way or manner personally. Garbin ordered goods for the [192] Klery Creek Mining Company at our store personally, very frequently. We shipped them to the camp where Fleming was. We delivered statement of sales to Garbin. He called attention to errors. When found to be errors they were corrected. The statements were made to the Klery Creek Mining Company. He did not complain that they were so made out. He never contended that the bills were Greenberg's personally.

In the fall of 1911 I saw Garbin about signing a deed made out by Mr. Hobbs, the one that had been previously signed by his partners, Lesamis and Tya-pay. Greenberg asked me if I could induce him to sign it; he said he would not, said others were interested; said it was a close question and would not sign until he knew more about it; said he had placed his matters in the hands of George Stanley and that George had told him not to sign any papers without first telling him.

In the fall of 1911 I made an itemized statement of the indebtedness of the Klery Creek Mining Company to Robinson-Magids & Co. This is the statement, made from the books of Robinson-Magids & Co. It is a correct statement; bears date September 1st, 1911. It corresponds with the items in the books of the Klery Creek Mining Co., except items of interest. Statement marked Exhibit "M" for identification.

[193]

[Plaintiff's Exhibit "M"—Statement.]

Deering, Alaska, Sep. 1, 1911.

M Klery Creek Mining Co.

Andy Garbin

John Lesamis

John Tyopay

(Geo. Stanley)

(Sam Sallo)

ROBINSON, MAGIDS & CO.

Bought of

Jobbers and Dealers in General Merchandise, Hay,
Grain and Lumber.

1910

Oct.	23.	Inv. #	179	.....	13	50
	20.	" "	194	.....	5	50
	29.	" "	200	.....	4	50
Nov.	2.	V. R. #	117	.....	5	00
	3.	Inv. #	205	1925		
			# 252	6 00..	25	25
	13.	V. R. #	124	.....	70	00
	15.	" " "	127	....	90	00
	25.	Inv. #	290	.....	5	50
	27.	" "	298	.....	14	50

 233 75

Dec.	12.	V. R. #	133	.....	95	00
	17.	Inv. #	356	.....	35	55
	16.	" "	360	.....	33	80
	19.	" "	361	.....	15	37
	18.	" "	364	.....	86	42
	18.	" "	365	.....	24	70
	"	" "	366	.....	56	25
	"	" "	367	.....	24	70
	"	" "	370	.....	80	00
	23.	" "	371	.....	34	80
	21.	" "	375	.....	33	75
	"	" "	381	.....	7	00

20.	"	"	382	.....	60	35
26.	"	"	383	.....	19	00
27.	"	"	386	.....	123	00

[194]

20.	V. R.	#	142	.....	168	00
24.	"	"	151	.....	26	25
27.	Inv.	#	393	.....	22	90
26.	"	"	394	.....	58	45
25.	"	"	398	.....	75	37
30.	"	"	413	.....	100	70
31.	V. R.	#	157	.....	16	00
"	Inv.	#	415	.....	250	00
"	"	"	416	.....	1	30

 1448 06

1911

1681 81

 Forward P. 11681 81

Jan.	6.	Inv.	#	422	.....	3	94
	3.	"	"	429	.....	27	65
	12.	"	"	438	.....	477	25
	21.	"	"	461	.....	1	50
	30.	V. R.	#	5019	.....	100	00

 610 34

Feby.	—	Inv.	#	493	.....	63	10
	13.	"	"	502	.....	79	17
	13.	"	"	503	.....	200	00
	8.	"	"	511	.....	22	00
	—	V. R.	#	5022	.....	1	25
	3.	"	"	5027	.....	185	00
	10.	Inv.	#	544	.....	14	00
	27.	"	"	549	.....	57	75
	27.	"	"	570	.....	502	81

 1125 08

[195]

Mar.	1.	V. R. #	5066	4 00	
	2.	Inv. #	578	129 40	
	15.	" "	612 & 613...	200 85	
	19.	" "	621	31 00	
	17.	" "	625	32 80	
	18.	" "	641	1 00	
	18.	" "	642	19 15	
	30.	" "	658	14 35	
	30.	" "	665	6 00	
	30.	" "	667	2 70	
					441 25
Apr.	1.	" "	673	50 00	
	1.	" "	675-676-677.	231 60	
	—	" "	680	18 00	
	19.	" "	726	95 45	
	21.	" "	731	17 00	
R-M Co.					506 40
	24	" "	756	94 35	4364 88
	—				
	27.	" "	757	148 29	
R-M & Co.					654 69
					4513 17
					4513 17
			Forward p. 2		
Apr.	28.	Inv. #	759	194 50	
	30.	" "	773	205 25	
					399 75

May	1.	“	“	776 B-1-2-3	2701	75
	1.	“	“	777	140	83
	—	“	“	782	52	38
	3.	“	“	786	630	90
	7.	“	“	815	19	50
	—	“	“	824	30	50
	31.	“	“	839	72	00

 3647 86

[196]

June	6.	“	“	845	99	75
	18.	“	“	882	93	25
	28.	“	“	898	9	00
	25.	“	“	904	110	55

 312 55

July	3.	“	“	920	25	00
	11.	“	“	932	8	50
	14.	“	“	933	63	00
	16.	“	“	940	8	50
	17.	“	“	941	24	75
	19.	“	“	943	114	50
	24	“	“	951	18	50
	—	V. R.	#	5178	12	50
	—	Inv.	#	952	27	00
	25.	“	“	955	18	00
	26.	“	“	960	140	00
	28.	“	“	961	194	25
	31.	“	“	962	50	75
	29.	“	“	996	993	00
	30.	“	“	999	322	82

 2021 07

Aug.	4.	“	“	1014	43 75	
	7	“	V. R. #	5208 . . .	4 50	48 25

 10942 65

Forward p. 3.....10942 65

Aug.	6.	V. R. #	5209	4 50	
—	“	“	“ 5210	6 50	
	8.	Inv. #	1026	194 25	
	11.	“	“ 1033	15 00	
	12.	V. R. #	5217	4 35	
	12.	“	“ “ 5218	3 75	

[197]

	16.	Inv. #	1044	43 55	
	24.	V. R. #	5232 & 5233	9 30	
	21.	Inv. #	1047	55 00	
	22.	“	“ 1053	34 25	
	24.	“	“ 1054	68 25	
	26.	“	“ 1059	8 50	
	28.	“	“ 1064	85	

 448 05

Interest on Nov. acct. \$233.75

—9 mos. @ 1% 21 04

Interest on Dec. acct. \$1448.06

—8 mos. @ 1 % 115 84

Interest on Jan. acct. \$610.34

—7 mos. @ 1 % 42 72

Interest on Feb. acct. \$1125.08

—6 mos. @ 1% 67 50

Interest on Mar. acct. \$441.25

—5 mos. @ 1 % 22 06

Interest on Apr. acct. \$1265.03

—4 mos. @ 1 %	50 60	
Interest on May acct. \$3647.86		
—3 mos. @ 1 %	109 44	
Interest on June acct. \$312.55		
—2 mos. @ 1 %	6 25	
Interest on July acct. \$2021.07		
—1 mo. @ 1 %	20 21	
	<hr/>	455 66
Labor Acct. Klery Co. Mng. Co.		
Ledger, p. 178	13955 30	
Interest on Amts. pd. against above Dec. 1910 @ Aug. 1911	104 42	
Teaming Account Klery Cr.		
Mng. Co. Ledger, p. 130...	1678 70	
Freight Account Klery Cr. Mng. Co., Joe Quillan Bills	934 05	
Freight Account Klery Cr.		
Mng. Co., J. Mellen Bills...	208 58	
M. F. Moran Account—See Bill	.311 50	
Paymt of amount advanced Kl. Cr. M. Co., by A. Garbin Ledger, p. 40	88 00	
Paymt of Time etc. claimed by	<hr/>	18052 55
A. Garbin, see Bills	772 00	
	<hr/>	
Tot. Debits	29898 91	
[198]		
Forward, p. 4—Tot. Debits	29898 91	
Credits:		
By Amount pd. on Outfit del'd May, 1911	2001 00	

By Interest as chgd. above on		
May acc't.....	60	03
By Amt. allowed on Bills Sep.		
20/11	217	32
By Commissary, Fares, etc., de-		
ducted from Time Chks....	709	68
By Dust pd. on a/c 479 $\frac{1}{4}$ oz 2		
dwt. @ 18 00.....	8628	30
By Dust Paid. Paid on a/c by		
Lesamis 913.85 and Garbin		
244.73	1158	58
	12774	91
	<hr/>	
	\$17124 00	

[Endorsed]: Statement R. M. & Co. Klery Cr. Mng. Co. #2349. H. Greenberg vs. Jack Lesamis et al. Plaintiff's Exhibit "M" for Identification Sept. 17, 1913. J. Sundback, Clerk. By J. A. B. Deputy.

#2349. H. Greenberg vs. Jack Lesamis et al. Plaintiff's Exhibit "M." Filed Sept. 17, 1913. J. Sundback, Clerk. By J. A. B., Deputy. [199]

[Deposition of Sam Sallo (Portion of).]

A portion of the deposition of Sam Sallo was offered in evidence by plaintiff as follows:

Q. Now, then, what reason, if any, did Spanish Jack give you for selling out?

A. Well, he did not say anything to me; the only thing he told me he did not understand much about mining and the first thing he told me if I want *to foreman* for him, and then next thing he said if I

(Testimony of Andy Garbin.)

want to handle the property for him I could have it. I said, "I got no money." He said, "How much you want to give it to me." I said, "I got no money." "Well," he says, "I know you for a long time and I let you have it for five thousand dollars, and the first time you get money you give it to me."

Plaintiff rests.

[Testimony of Andy Garbin, for Defendants.]

ANDY GARBIN, called as a witness for defendants, testified as follows:

I was born in '67; I am eight years in Alaska; have lived in Kiana since 1909; Lesamis, Tyapay and I located claims, some separately and some together. We subsequently sold a quarter interest in all our holdings to Greenberg. We were living on Discovery claim when Greenberg came to us—Sam Magids was with him. He said he heard we made strike; we told him and showed him the gold about fifty dollars; we gave it to him. It was prospect gold—we were just prospecting. We told him what claims we had. He said they looked pretty good to him. He says, "You boys have no grub." I said, "We got lots grub," three or four tons. He said, "I want you partners, you fellows, I like you pretty well, I buy interest, so if you want to sell [200] half interest I want to buy it. How much you want for it?" I said, "We want two thousand dollars cash now and fifty thousand dollars for one-quarter interest to be partners with us." He said, "That is too much money—I make proposition, I give you fellows fifty

(Testimony of Andy Garbin.)

thousand dollars, money help take out the ground.” Next morning Greenberg says to me, “Better, Andy, you get in for be my partner.” I said, “Better, Mr. Greenberg, you buy everything one hundred and twenty dollars.” He said “No, I need somebody for mine ground; I want for my only interest with you Spanish boys—I got man draw papers.” Next morning he start in for draw paper. He got in paper buy half for fifty thousand dollars. Then there was discussion. He said, “You better come down.” I said, “Whole property worth one hundred and twenty dollars; let him pay thirty thousand dollars for we are partners for one-fourth interest.” So he says, no, he got no money to pay us then. He said he would pay six thousand dollars each and twenty-four thousand for his share of the property. So he draw up another new paper—he gave us two thousand dollars apiece, by checks—Sam Magids draw the agreement and then the deed. The instruments in evidence—no other agreement was drawn—as I understood it, the twenty-four thousand dollars was to come from his share. First moneys from the ground. He got not one cent before he pay us twenty-four thousand dollars from the ground from his share mining.

That new deed presented by Greenberg for me to sign was different—I refused to sign it.

Greenberg also agreed to supply us what we needed in camp free—we got some, some no.

We commenced to use the name Klery Creek Mining Company about the middle of summer, 1910,

(Testimony of Andy Garbin.)

July, maybe. When we [201] started to work then we got books. We commenced building cabins, tents, bringing tools on No. 1 Above Star Association in March or April. We hired Bob Fox foreman; he kept books.

When we were through mining in the season of 1910, we went to Kiana with the gold-dust, over nine hundred ounces. Moran got seven hundred and twenty dollars in gold-dust; Lesamis, Tyapay and I gave it to him. We loaned it to him—one-third to each of us. It was taken out of the company poke.

When we got to Kiana Greenberg was there. I said, "Greenberg got nothing to do with this gold." Greenberg, he says, "You better take it to Nome, give to bank, then you have divided it in the bank, everyone taking his share, in money—Jack, Tyapay and I. The gold-dust was sent to Nome. I was not going to Nome so Greenberg tell me he give me my money, my share. He say, "I pay bank, I going to Nome. I meet boys in Nome in three days—I did not go, waited for Greenberg pretty near boys lost last boat. I went to store Kiana. I say to Mr. Magids, "Greenberg left some money for me here?" He said, "Well he didn't send anything up for you here yet, you can have what you want on credit." I don't know where the gold-dust went to—Greenberg returned in December, I see him in Kiana—I say, "Where is my money? You leave my money down in Nome in Bank?" He says, "Oh, no. Didn't you get your share, your share money?" I say, "No." "Well," he says, "You could get it right here from me any

(Testimony of Andy Garbin.)
time you want money.”

After that I see my foreman, I say to him, “You better get that money; I want my money, my share”; he says, “All right.” One night he come up and he say, “Here is your money.” “How [202] much?” I said. He said, “Twenty-one hundred dollars; he give you check thirteen hundred twenty dollars and the rest he, Greenberg, keep back, six hundred thirty-seven dollars, something like that.” Greenberg said when Tyapay went away that fall he promised two thousand dollars be left for company. I said, “I know nothing about that.” He said, “Well, better leave your money with the company anyhow.”

Greenberg got all the gold-dust; I tried to get the money on my check at the store. Magids said, “You got to go to Candle.” He gave me new check on Candle and tore up the old one. I take dog team and go to Candle cash my check, pretty near spring.

The talk I had with Greenberg about May, 1911, was about assessment work. Nothing was said about mining No. 1 Above Star Association because the other two partners went outside. Greenberg said, “I don’t care what you do”; he said, “go up and do the best you can; keep expenses down and I will let you have up to a thousand dollars to start up with”—buying groceries for me and my brothers.

Tyapay and Lesamis said nothing to me about mining in 1911. Before Lesamis and Tyapay went outside the three of us and Bob Fox and Greenberg talked together—Tyapay and Lesamis said they no want to do anything in the partnership mines—only

(Testimony of Andy Garbin.)

they want for be sure assessment work be done. Tyapay said he was through partnership. He would send money for assessment work,—next thing I go to Greenberg and ask him what shall I do now, if I commence mining that spring. He said, “I got no money bother any more you fellows—I got plenty money; I going to mine for myself, no bother you fellows any more—I am mining for myself—no matter if I [203] lose my money I going to mine for to suit myself.”

There was eighteen ounces of gold-dust from the Star Association—went to pay for expenses 1911; it was in the strong box on No. 1 Above; Fleming had the Key first; he gave it to me; I gave it to Jack Lesamis; I went to Kiana; I said, “Give nobody my money.” Greenberg afterwards told me that Lesamis gave him that gold-dust. I went to Kiana because Greenberg want to throw me out my part of partnership. He said, “You got nothing to do here. It is all mine—ground, improvements, everything.” Then I went to see Judge Moran—I must see somebody. Greenberg told me he took this Lesamis money. He says, “I got to pay bills.”

I sold to George Stanley; I stayed on No. 1 Above Star Association that summer to watch my interest, my quarter interest. I only was there laying around. Stuart Fleming hired and discharged the men. He was not under my direction or control. I was just like a stranger to him. Fleming told me he has charge of the work there. Greenberg had sent for him up. He changed everything. I got nothing to

(Testimony of Andy Garbin.)

do. What he says is boss.

In regard to orders signed by me they were signed at request of Fleming. I told Levy I no could get along with Fleming—I never had nothing to do with Fleming. I never object to him—he do what he please.

Greenberg claims one eight interest in the Oregon bench because we staked him in, and also claims one quarter of our interests under the partnership agreement. That is not right because he was staked in equal like that all of us. [204]

We had some talk in the early summer about leaving two thousand dollars for next year's work, but never agreed to do that; I never gave order for Lesamis or Tyapay—Lesamis never told me to represent him.

I brought gold to Kiana at Fleming's request; I gave it to the Store to Izzy Provda four hundred and fifty ounces.

After we got through on No. 1 Above, season 1911, leases were drawn. There was no understanding that the royalties was to go to pay Klery Creek Mining Company debts—the company had no debts.

I did not say to Hugo Eckhart, "See my foreman." He said, "Andy, could you let me have some men?" I say, "Well, you will have to see Mr. Fleming—I have not got charge of that—you have got to ask the foreman."

In regard to that telegram to get some men from Nome, I was on the creek—Stuart Fleming says,

(Testimony of Andy Garbin.)

“Andy, I give you a letter; you go to Kiana see Levy and tell him send me men forty or fifty.” He gave me that letter. I went to the store handed it to Levy. Levy said, “You go to Moran tell him write letter for you.” I did so; he wrote that blue letter and I signed my name; I did not tell him to sign my name; I tell him about the workmen, that is all.

I never authorized that Exhibit “J”; I never *was* that telegram until now in court.

When we quit mining in 1910, we sold everything—about two thousand dollars worth. Greenberg took it all—tools, grub, everything.

When that receipt for four hundred and fifty ounces of gold was given me I did not read it. I got a receipt for [205] four hundred ounces because I kept fifty ounces out—supposed to be mine. I hand another receipt first, got it from Izzy Provda. I did not know that the names of Garbin, Greenberg, Tyapay and Lesamis were on that receipt.

Original receipt, Exhibit “4,” offered in evidence as follows: [206]

In 1910, we agreed that gold-dust be taken to Nome; we were going to settle up in Nome—divide the money in Nome.

Cross-examination.

When we made the deal with Greenberg he agreed to furnish provisions to last till July. He gave us six thousand dollars in checks.

Bob Fox had charge of the work during the summer of 1910; Lesamis, Tyapay and I were there also; Greenberg got interest in all while we was a partner-

(Testimony of Andy Garbin.)

ship; in all we had before—we were all to put up expenses for that year; we sent orders to the store in Kiana for what we wanted; Greenberg was there; we did not know anything about that Magids Company; we got three thousand or four thousand dollars worth; the rest of the expenses went for labor; we were all to pay for it; we were to take it from the gold-dust. The rest was profit; the three of us got that, we three—Greenberg was to get nothing. The total amount of gold-dust taken out in 1910 was sixteen thousand three hundred and fifty-one dollars; the expenses were eight thousand eight hundred and sixty dollars, leaving a balance of seven thousand seven hundred and thirty dollars. That is about right. I got thirteen hundred and some over. I bought a nugget from the company, something like two hundred and seventy-five dollars.

I did not tell Magids to keep out anything—one-third of two thousand dollars groceries for the coming winter. [207] When I went to get my pay twenty-one hundred dollars, he just keep it—just kept my money.

I did not have an understanding with Greenberg, Tyapay and Lesamis that this bill for two thousand dollars should be sent in to the store, because the boys went outside. I don't know that Tyapay wrote out such a bill and gave it to Magids that fall. I don't remember anything like that. I heard you read his letter to Greenberg. We never agreed to that—I don't know what provisions that letter referred to. In the winter of 1910 and 1911, I lived in Kiana—I

(Testimony of Andy Garbin.)

was in different places—I worked three or four days on No. 1; then I went to the Star and helped them and then I go prospecting myself. I was on Bear Creek three or four days with Stuart Fleming; he had three or four men working—I did not work with him on Klery Creek; I went there some times—I slept in the cabin there with him three or four nights.

I know where Fleming was working that winter. I did not know that the expenses were charged up at the store against the Klery Creek Mining Company. Mr. Levy gave me statement every month and I checked them over. They were all made out to Klery Creek Mining Company; they were so made all winter until mining was commenced on No. 1 above. The bills were not delivered to me during the summer of 1911—not to me; to Klery Creek Mining Company; I got mistakes corrected. In 1911, the expenses in mining what he say was twenty thousand dollars, and the gold taken out was eight thousand dollars; Fleming attended the cleanup—sometimes me, sometimes Fleming handled the gold. He put it in the strong box; sometimes he sometimes I carried the key—I nearly all summer.

I stayed in the cabin with the strong box—I turned that gold over to Greenberg—I turned it to him for make settlement. I take fifty ounces out of poke for myself. [208] I gave him four hundred ounces but I told him I got about fifty ounces. Fleming told me he thought the poke was short. There was eleven ounces that I had never accounted for. When Greenberg came in the fall the men were asking for

(Testimony of Andy Garbin.)

their money. I don't know how many. Greenberg asked us boys to check over the accounts with him to see how much we owed for labor and groceries that summer. I did not say that I didn't owe my share. He wanted me to give him a mortgage. I did not want that. He said to Lesamis and me that if we would secure him by mortgage he would pay the men out of his own pocket. But I went down to Kiana, Stanley paid me nothing for that deed I gave him in Kiana. I gave it to him to handle my property—no one advised me—I gave him the deed that is all.

I did not say in my deposition after this action was commenced that I had no interest whatever in the claims of the Klery Creek Mining Company. I no got any at that time—no interest. I said I sold it to George Stanley. He was acting for me in trust—holding the property for me. In December we signed a new paper to show that Stanley represented me.

Paper offered and read in evidence marked Exhibit "V." [209]

[Plaintiff's Exhibit "V"—Agreement, December 27, 1911, Between Stanley and Garbin.]

#1704

This agreement and declaration of trust, made this 27th day of December, 1911, between Geo. L. Stanley the party of the first part and Andy Garbin of Kiana, Alaska, the party of the second part,

Witnesseth; That whereas on the 2d day of September, 1911, the said party of the second part granted, bargained and sold to the said party of the

first part, in consideration of the sum of seven thousand five hundred dollars (\$7,500.00) those certain mining claims lying and being in the Noatak-Kobuk Recording District, District of Alaska, to wit; All his right, title and interest in and to any and all Mining Claims, owned or held by said party of the second part in said District, and thereafter on the 17th day of December, 1911, made, executed and delivered to said party of first part a bill of sale of all his right, title and interest in and to all accounts, claims and demands of said party of the second part against one H. Greenberg and against the Klery Creek Mining Company: Also in all royalties accruing under leases of said premises conveyed as above mentioned.

It is now in consideration of One dollar to him in hand paid to said party of the first by the said party of the second part, and in consideration of mutual covenants hereafter mentioned, understood and agreed by and between said parties, that the said party of the first part shall, and he does hereby agree to hold the premises and property sold and conveyed to him, in trust for the use and benefit of the said party of the second part, and under and with the advice of said party of second part, will manage and account for said properties, and account to said party of the second part for all rents, royalties, issues, profits and proceeds of said properties; that is to say, he will pay and deliver to said party of the second part, sixty per cent (60%) of all net rents, issues, profits, royalties and proceeds on demand after cleanups or as soon as realized, re-

taining for his services, in lieu of the consideration heretofore agreed to be paid for said premises and property, Twenty per cent (20%) of the net rents, issues, profits, royalties and proceeds, the additional twenty per cent remaining to be paid to the attorneys [210] of said parties under separate agreement this day made.

It is further understood and agreed between said parties, that no charge shall be made by either of said parties, as against the other, for labor or services or expenses incurred in connection with said properties or litigation involving the same, said division of said net profits being in lieu of such services and expenses.

This agreement shall bind the heirs, executors, administrators and assigns of the respective parties hereto.

GEO. L. STANLEY. [Seal]

ANDY GARBIN. [Seal]

Signed, sealed and delivered in the presence of

O. D. COCHRAN.

G. J. LOMAN.

District of Alaska,
Cape Nome Precinct,—ss.

This is to certify that on this the 27th day of December, 1911, before me a Notary Public in and for the District of Alaska, personally appeared the foregoing named Geo. L. Stanley and Andy Garbin, personally known to me to be the identical persons described in and who executed the foregoing instrument, and acknowledged to me that they executed the same freely and voluntarily for the uses

and purposes therein mentioned.

Witness my hand and seal the day and year in this certificate first above written.

[Seal]

G. J. LOMAN,

Notary Public in and for the District of Alaska.

Filed for record at 9:30 A. M. Nov. 22d, 1912.
J. W. Southward, Recorder.

The foregoing is a true and correct copy of agreement as filed for record in Vol. 13 at page 234 of the records of the Npatak-Kobuk Recording District.

[Commissioner's Seal]

J. W. SOUTHWARD,

Recorder. [211]

[Endorsed]: #2349. H. Greenberg vs. J. Lesamis et al. Plaintiff's Exhibit "V." Filed Sept. 17, 1913. J. Sundback, Clerk. By J. A. B. Deputy. [212]

[Testimony of M. F. Moran, for Defendants.]

M. F. MORAN, witness for defendants, sworn and testified:

I live at Shugnak. In April, 1910, I went down to Kiana. I know plaintiff and defendants. A strike was made near Kiana in the fall of 1909 by Garbin, Lesamis and Tyapay. I was the Recorder and United States Commissioner for that district. They filed about forty notices of location. After October that year I drew up articles of partnership between them. Greenberg bought in in March, 1910. I told them that I would draw this agreement so they would be equal owners in all their holdings. They signed it and recorded it.

(Testimony of M. F. Moran.)

When I saw the boys in April, 1910, they told me of their understanding of their agreement with Greenberg. I found later that Greenberg had a different understanding. I heard several conversations between Greenberg and Garbin in June, 1911. They were discussing their differences. Mr. Greenberg said at that time with reference to future mining he would show them how to mine now; that he had brought a man with him and he would open up the country. Garbin was complaining that he was going it too strong for that kind of a company. Greenberg said that it was his money, that he had plenty of it and he would spend it as he saw fit; it didn't belong to Andy or any one else. Andy said that if there were losses he didn't think that the company could pay and that he had no money.

I was present at a conversation when Jack Lesamis told Greenberg he had not told him right about that new deed. Jack says: "Didn't you tell me this paper was the same as the old one?" Greenberg says, "What are you talking about? Here is your name on it, I have got your name on it. This is your name, is it not?" That was all that was said. [213]

Cross-examination.

None of the parties told me who were mining there in 1911. I thought they were all mining together. I didn't take any interest in it and didn't inquire into it.

I just recollect Greenberg speaking about this mining he was going to do; explaining that he had

(Testimony of M. F. Moran.)

plenty of means and that it was his business how he spent his money. I naturally supposed that it referred to the claims involved here. I wouldn't swear that they were not talking about benches not concerned in this partnership.

Redirect Examination.

Greenberg owned only an interest in the Oregon claim outside of the properties we were talking about. [214]

I sent that letter to send forty men—I did it for Fleming.

[Testimony of Andy Garbin, for Defendants (Recalled).]

Redirect Examination of GARBIN.

In the spring of 1911 I worked on Center Creek—part of winter—doing assessment work. In the spring of 1911, I was on No. 1 Above watching around for my interest—I do nothing—was not on pay.

I told Izzy in the store about taking fifty ounces out of poke. I took it out in Kiana—Fleming did not know about it. At the close of mining in 1911, I did not owe anybody anything. I first discovered that Greenberg held me responsible for summer's work in 1911 when he closed down and asked me. That was the first he ever asked me for anything.

[Testimony of Jack Lesamis, for Defendants.]

JACK LESAMIS, called as a witness for defendants, testified as follows:

My name is Jack Lesamis. I am married. When I went to Klery Creek—Squirrel River—Garbin

(Testimony of Jack Lesamis.)

and Tyapay went with me; we were prospecting and made a strike. We located many claims around there—about forty claims around there in our names. Greenberg came in March, 1910—Garbin, Tyapay and I had entered into a partnership in regard to mining before we met Greenberg; Judge Moran drew the agreement. We were living on Discovery Claim. Greenberg came and we talked business. He first tried to buy a half interest. We asked him something like sixty thousand dollars for half interest. We asked cash, but he wanted bed-rock. We showed him our partnership agreement. We entered into another partnership agreement. There were two papers—deed first, after this [215] grub business up to July.

For selling the ground, quarter interest, we got thirty thousand dollars, six thousand dollars cash; twenty-four thousand dollars come out of the ground from his share—provisions up to July. Agreement in conjunction with deed was for get provisions free up to July. We afterwards mined on No. 1 Above Star Association. I think Greenberg started to call it Klery Creek Mining Company. We took out over sixteen thousand dollars, something like seven thousand five hundred dollars net. I got one thousand dollars of it; I got no part of the gold itself; I got a check for one thousand dollars from Greenberg. He gave me a letter in Kiana and after I got it in bank. The letter was no good in bank. I telephoned to Candle—I want what is coming to me. The letter was addressed to the Nome Bank. It was no good there. Then I telephoned to Candle—

(Testimony of Jack Lesamis.)

then I went to Murphy and got my money. Murphy gave me a check and I took it to the Nome Bank. About twenty-five hundred dollars was given to me from the first season's work, but I got one thousand. I never got a cent more—Greenberg took the gold-dust. I don't know where he took it—down here to Nome to settle up here in Nome. I went outside. When I come back I see him here in Nome, in the spring. I tried to get the balance of my money. I no can get it. I ask Greenberg for it. I said, "I want my money"; he said he pay every bit of it—"I pay you up in camp"; "There is money up there for you." I went for get it—there is no money for me there. I told Greenberg, "Where is my money—I no get my money coming to me." He says, "I got some hundred dollars because I don't know how it was going next year." [216]

Before going outside in the fall of 1910, I had no understanding with Greenberg or any other person in regard to mining the following season. I was talking to Greenberg—I said for my share in my claims to do nothing at all—I got no money for works, to pay expenses. He said he not call for any money from you boys; "I no want anything off you boys."

(Exhibit "G" handed witness.)

I know that signature, John Tyapay. That ain't my signature—I know nothing about a letter dated Nome, Alaska, October 20th, 1910, written by Tyapay to H. Greenberg.

I left it with Bob Fox to see assessment work done

(Testimony of Jack Lesamis.)

—I did not leave my business with anybody up there in Kiana.

John Tyapay never returned; I did no mining in the summer of 1911. I was living up there looking around—Stuart Fleming was mining on No. 1 Above Star Association during that summer. He was mining for Greenberg; Greenberg told me himself, he says, “I am mining there.” I gave no directions about mining there at all. We built a new cabin there, I was living there; I built a cabin for me; I took no part in the mining, I got there the fourth or fifth of August, 1911: They worked there about two days after that. When Andy left he gave the key to the strong box to Fleming and he gave it to me. There was four hundred ounces of gold-dust that came from the Star Claim—Greenberg came in the morning and he says, “You got a key to the strong box; give it to me.” I said, “When Andy Garbin leave he leave it with me to keep for him.” Greenberg says, “Better I give it to him—better I open the strong box, if I didn’t want to get into trouble.” I open strong box like Greenberg told me—I put it on the [217] table and Greenberg took the poke. He weighed the gold, soon as he weight it he snatched it up. He has got my brother’s money, all my gold, all Andy’s gold, and he take it away with him—something like ninety ounces. He gave me a receipt for it.

(Receipt marked Exhibit 2 for identification.)

This looks like the paper Fleming gave me at the time he took the gold-dust.

(Testimony of Jack Lesamis.)

(Receipt offered in evidence marked Defendant's Exhibit 3.)

My brother and I called on Greenberg. He say the gold belong to the boys. My brother say, "You had no right to take that gold." I say I did not give it to him—he take it. He said, "I give you no gold, you got receipt for all that gold." I do not read English—I got no part of that gold back. It was charged to me.

When Greenberg called on us in March, 1910, it was said Greenberg was to put up all of the provisions to July free; then we mined on No. 1 above that summer; after July each to put up his share for all expenses; after that he want to mine. He said he is going to mine on his own hook, after 1910.

I signed the leases that were drawn at the close of the season of 1911. In the spring of 1910 we had four or five tons of grub—I had about three thousand dollars in money—Garbin had some money, Tyapay also.

I remember leaving Judge Moran seven hundred and twenty dollars. He wanted some two or three times, so I gave him about two hundred dollars one time and I leave instructions [218] with Andy Garbin to give him some more, and Tyapay—the three of us give him forty ounces. The first I ever heard that it was charged to me was here in court. I never authorized anyone to charge it up to me—Garbin, Tyapay and I were all present when Moran got that gold-dust.

(Testimony of Jack Lesamis.)

Cross-examination.

We said to Greenberg because he was trying to get in with us—we had prospected some—since then *then* we have found that it is not all so rich. We can make good wages on Discovery. No. 1 above is just the same. That is the claim we worked in 1910 and 1911. That Stuart Fleming worked. It is not all worked out. No. 2 above will pay to work—It has been prospected.

We had a partnership agreement at the time we made the deal with Greenberg. In that partnership we put the claims in jointly and worked as a partnership. We then took Greenberg in as a one quarter partner. He was to put up groceries until July; give us six thousand dollars and the balance out of his share in the ground. At that time the claims were all in the partnership.

I worked there all summer in 1910; I left early—Did not see Greenberg in Nome, because I had gone outside before Greenberg came here. Greenberg did not keep his word—he said he come in eight days. Before I left I went to Murphy and drew one thousand dollars; Murphy telephoned to Candle because we can't get our money here—we left Bob Fox to do the assessment work. [219]

In 1911 I saw the telegram from Garbin—I told Greenberg to do what he pleased; I did not say to Greenberg we will send them the men so they can go ahead with the mining—I had nothing to do with it; Greenberg sent the men; I didn't. I got there in August—I carried the key to the strong box when

(Testimony of Jack Lesamis.)

Garbin gave it to me—I ate and slept on No. 1 at the camp messhouse. I did not pay for it—no one asked me to pay; I never paid. I stayed around there till September—I took some supplies from the messhouse to my cabin; they were charged to me.

I sold my property to Sam Sallo. He has never paid me anything; I got interest from 1910; I got no interest in lawsuit; I do not own any of those claims: Sallo is supposed to pay me when he got some money; I have his promissory note; he is a friend—I trust him.

Greenberg told me in September, 1911, the men wanted their money—that there was not enough to pay them; Greenberg was mining for himself. Greenberg say that if Garbin and I would secure him he would put up the money; I never tell him I would give him security.

The first time that I ever argued with Greenberg that the partnership agreement ended in the fall of 1910, was at the end of the season of 1911, when the men were around there demanding their pay.

I did assessment work in 1912; Greenberg requested it by letter—It was on the claims in suit.

Greenberg had nothing to do with the loan to Moran.

In 1911, in Nome, I asked Greenberg for money from 1910. He told me he had sent the money up there to Kiana. When Greenberg came to the Camp he says, “You boys got nothing to do here; you better keep away from here—everything here [220] is mine—I own everything.

(Testimony of Jack Lesamis.)

I had one thousand dollars coming—I did not know that I had been charged up with one-third of two thousand dollars worth of grub and provisions—I did not know of such arrangement.

I did not get any of the royalty collected under the leases—Sallo may have. He is now in San Francisco. I hold no power of attorney from him.

Redirect Examination.

I authorized no one to make a charge against me for groceries after the work was finished in 1910.

When I returned from the outside in 1911, Greenberg presented a new deed to me. He says, “I got new document here—just like that one you made on the creek. Now, would you come to the store and sign that new deed? I want to put it on record here in Nome,” so I signed it—I did not read it—we read it, but I did not understand them big words. I would not have signed it if I had known that it was different from the first one. I found it out afterwards. Mrs. Lesamis signed as a witness; she does not read or speak English.

At the time we formed our partnership nothing was said about any claims going into the partnership at all. We was mining on No. 1 Above.

Recross-examination.

Hobbes read the deed to me in his office before I signed it. He just read it—he did not explain it. He was explaining something—I don’t know what for. I was trusting Greenberg. [221]

**[Testimony of Sam Magids, for Defendants
(Recalled).]**

SAM MAGIDS, recalled on behalf of defendants, testified:

(Witness shown Defendants' Exhibit 5 for identification.)

This is my signature—I had authority to sign this letter for Mr. Greenberg and Mr. Tyapay.

(Letter offered in evidence marked Defendants' Exhibit No. 5, as follows:) [222]

**[Defendants' Exhibit No. 5 for Identification—
Letter, December 17, 1912, Greenberg and
Tyapay to Lesamis.]**

Kiana, Dec. 17, '12.

Mr. J. Lesamis

Sir:

We want to be assured that the assessment work has been done on the Butte Assn. and the California. If you have done the work we are ready to settle for our share of the expense when affidavits have been filed to that effect.

Kindly see that such affidavits are filed before the 22nd of this month.

If no such filing is done by that date will take it for granted that the work has not been done, and we will send up men to do the work for us.

H. GREENBERG,

J. TYAPAY.

By SAM MAGIDS,

Agt.

[Endorsed]: #2349. Greenberg vs. Lesamis et al. Defts. Exhibit No. 5 for Identification. Sept. 18, 1913. J. Sundback, Clerk. J. A. B. [223]

[Testimony of Andrew Garbin, for Defendants (Recalled).]

ANDREW GARBIN, recalled for defendants, testified:

I did the assessment work on my own interest in the claims in 1910. Stanley did the assessment work in 1911, and 1912. I did the work with the boiler. I own the boiler still. I bought it in Nome in 1910.

Cross-examination.

John Morris helped me do the assessment work; I paid him; I gave him an order on Robinson, Magids & Company's Store. I had money over there. The order was paid. I got my groceries while doing the work from Robinson, Magids and Company—I paid cash for some; this was in the winter of 1910 and 1911. When I lived in the Camp on No. 1 Above I agreed to pay board. I have not done so; I was not asked to pay.

Redirect Examination.

I was only in the camp three or four times—this was before sluicing in the spring. I was not there more than two weeks altogether.

[Testimony of George Stanley, for Defendants.]

GEORGE STANLEY, witness for defendants, testified as follows:

My home is at Kiana. I am acquainted with plaintiff and defendants. I bought Mr. Garbin's interest

(Testimony of George Stanley.)

and I went over to Robinson-Magids Store at Kiana and told Mr. Greenberg that I had a deed from Garbin. He said, "Well, I have got a new partner." I said, "Yes." We talked over matters and things to avoid a lawsuit, finally the whole thing fell through.

[224]

Several propositions were made. I told Mr. Greenberg that the boys had not received all their money for 1910. He said that was all settled. I did not receive one cent from Mr. Greenberg on account of those transactions.

Sallo and I collected royalties under the leases that were given by Greenberg, Tyapay, Lesamis and Garbin; I collected for Sallo and myself—on the other side the royalties were delivered to Mr. Levy, the Greenberg, Tyapay interest. I have received no part of the twenty-four thousand dollars consideration.

**[Testimony of Sam Magids for Defendants
(Recalled).]**

SAM MAGIDS, recalled for the defendants, testified:

Direct Examination.

In the fall of 1910, there was a settlement between Greenberg, Lesamis, Tyapay and Garbin by which we credited up certain portions of the bills after they quit operations, that is all the stuff they returned—the bills before July, 1910, were charged to Mr. Greenberg on our books at Candle; we recognized only Mr. Greenberg—Mr. Greenberg was letting the men at Klery have the goods. The other bills were

(Testimony of Sam Magids.)

charged against the Klery Creek Mining Company. The bills agree with the statement furnished by Mr. Levy.

[Testimony of George Stanley, for Defendants.]

GEORGE STANLEY, for defendants, recalled and testified:

I was present at the time the leases were made out and when some of them were signed. Nothing was said about how the royalties collected were to be applied; I never heard any one who had any interest in this ground claim that the royalties were to be applied to Robinson, Magids & [225] Company's accounts.

I have done assessment work on the properties since acquiring an interest for the years 1911 and 1912, and some for this year. All the work specified in the supplemental answer and cross-complaint was done by me or under my supervision—one-half of said work, twelve hundred dollars, was for representing Greenberg's interest. No work has been done in the way of mining upon any of these properties since 1911, except by laymen.

Cross-examination.

The leases were for two years and expired this fall. The royalties collected by Mr. Sallo were not paid to Robinson, Magids and Company; they were for his interest in the leases. I paid Garbin his share of the royalties collected under the leases.

I did assessment work before the lawsuit was commenced in 1911, from September until about Thanks-

(Testimony of George Stanley.)

giving time, nearly three months. I did work on three or four different claims on Center. There were three of us working on four claims.

Garbin, Tyapay and Lesamis did not pay me anything for my work in 1911. In 1912 I worked on something like twelve or thirteen claims; they were not under leases. Personally I worked on about six; on others I had it done. I worked on Nos. 1 and 2 Bear Creek,—Garbin, Tyapay and Lesamis have paid me nothing for that work. In 1913 I personally worked on one claim on No. 2 Above Star, Tyapay, Garbin and Lesamis paid me nothing for same; I have never made demand on them. [226]

I was not present all the time while the leases were made out. I don't know the preliminary arrangements that were made.

Redirect Examination.

Sallo also did assessment work, his own work—the assessment work was all done this way. There was so many mining claims that had to be represented—there was no use of everybody putting in a one-fourth on each claim, so we divided up amongst us so as to be on every claim, so as to represent each claim, a hundred dollars worth was assessment work, so we would take certain claims and do all the work on those claims, and other claims; they did all the representing, so that every interest has been protected; we done all the work on all the claims and Mr. Greenberg has done none of the work. The work was not done by me as a member of the Klery Creek Mining

(Testimony of Sam Magids.)

Company; it was not done on their part—I did the work as co-owner.

[Testimony of Sam Magids, for Plaintiff (in Rebuttal).]

SAM MAGIDS, called as a witness for plaintiff, in rebuttal, testified:

I heard Moran's testimony in regard to certain conversations in June, 1910, with reference to what Greenberg was going to do as an individual. I was present at the time of this conversation; it had reference to some claims that Sam Marshal and Charles Call wanted to turn over to Robinson, Magids and Company. They were benches off Klery—Oregon Benches Nos. 5, 6, 7, and 8. That conversation did not have any connection with the Klery Creek Mining Company. [227]

[Testimony of H. Greenberg, for Plaintiff (Recalled in Rebuttal).]

H. GREENBERG, recalled in rebuttal, testified:

I heard Magids' statement in regard to that conversation; it was correctly detailed by him. That conversation had no reference to prospecting on claims belonging to the Klery Creek Mining Company.

[Testimony of W. L. Levy, for Plaintiff (Recalled in Rebuttal).]

W. L. LEVY, recalled in rebuttal, testified:

I was present in court when Garbin testified in regard to some conversation that occurred between him and me in the store about sending for men; he said

(Testimony of W. L. Levy.)

that there were not men enough to go ahead with the work profitably, with the mining operations; he said it would be a good idea to send for some men, I said, "I think there are men enough there to do the work." He said, "They ought to have more men; they really needed more men; it would make them able to get their work done for less wages. He argued with me to send the telegram. I refused to do so.

Cross-examination.

I did not direct Garbin to go to Moran. Garbin did not say to me that Stuart Fleming had sent him to make arrangements to get more men; I don't think he mentioned Stuart Fleming at all at that time.

[Testimony of Philip Murphy, for Plaintiff (in Rebuttal).]

PHILIP MURPHY, called as a witness for plaintiff, on rebuttal, testified:

I am the manager for Greenberg in the mercantile business, the Bessie Store. I was in charge of that store in July, 1911. I recall Greenberg receiving a telegram about [228] July 17th, with reference to sending men to Klery Creek. I got the telegram. I talked with Greenberg and Mr. Lesamis about the telegram. Greenberg told me to show the telegram to Jack Lesamis; he was then in town. I did so; they were both in the store. I read the telegram and explained to them that it was a telegram calling for forty men on Klery Creek. Greenberg asked Lesamis if he thought it advisable to send forty men, if were needed there by the company. Jack said he

(Testimony of Philip Murphy.)

thought the boys on the ground knew best; that if they thought they needed them he thought it all right to send them. He brought in a few that he wished to have sent up. He brought in his brothers and he brought in Sam Sallo. I sent the men up in response to the telegram received from Garbin.

In September, 1910, Tyapay and Lesamis were in town; they said they wanted some money of the proceeds of the Klery Creek. I talked to the men in regard to the amount each received; I gave them two checks and took two receipts; I went to the Bank with them at the time they drew their money; Lesamis, I believe, got one thousand dollars, and Tyapay two thousand dollars; they were together when I paid them; they were together when they drew the money at the bank. They talked about what they were going to do that winter. Jack, I believe, was to prospect and Tyapay was going out. Greenberg they said would go out also for the winter; they designated him as their partner.

I met Garbin in Nome in the fall of 1910; he spent about a week with me; he was then making preparations to do winter prospecting; they were going to prospect some of the property so as to know what to do the next year, the summer [229] of 1911; that was about October 1st, 1910.

I have no personal interest in this lawsuit; I am not employed by Robinson, Magids and Company.

Cross-examination.

Jack Lesamis brought some men to me to be sent

(Testimony of Philip Murphy.)

up to Klery Creek; he did not say he had hired them; he asked me to send them up.

I did not tell Jack Lesamis how much was coming to him when I paid him the thousand dollars; I gave them what they asked for; he did not say that it was all that was due to him. I had orders to pay it. I knew they were all partners together there in the mining, and that they were all interested in that company. I gave them this money for Mr. Greenberg as his partners.

[Testimony of J. F. Hobbes, for Plaintiff (in Rebuttal).]

J. F. HOBBS, called as a witness for plaintiff, in rebuttal, testified:

The deed that has been exhibited here, called the new deed, was drawn in 1911. I drew it. I met Mr. Lesamis in 1911; Greenberg introduced him; both gentlemen came in together; Mr. Greenberg said, "Mr. Hobbes, I want to introduce you to my partner, Mr. Lesamis." They discussed with me the question of the signing of that deed at that time. I read the deed over to Mr. Lesamis; it had been prepared before; I told him the difference between that and the original deed; in response, his language was quite broken, but I remember he said it was all right. I asked him, "Do you understand?" then he said, "Yes, it is all right." No persuasions or coercion was used. [230]

Cross-examination.

It is my impression that Greenberg had the deed drawn the fall previous. I think he mentioned the

(Testimony of J. F. Hobbes.)

matter to me. I think the fall previous Greenberg wanted me to prepare another document; to prepare a deed embodying the agreement, and to have it ready to be executed by Tyapay, Lesamis and Garbin. Greenberg did not tell Lesamis in my presence why he wanted the new deed. I told him the difference in the two instruments; told him why Greenberg wanted him to sign it. Greenberg also told him. I first read the new deed to him; there was something in that new deed that required an explanation; there was a difference between that deed and the original deed; I certainly told him the difference.

Q. Now, go on and explain the difference, when you were explaining the terms of the new deed, what did you tell him about the meaning of this language "That twenty-four thousand dollars is to be paid from the proceeds of said mining ground"—what did you tell him that meant?

A. I told him the difference between the two deeds.

Q. What did you tell him what that meant?

A. I did not segregate the clauses of the deed in talking it over with him. I told him the difference between that and the present deed, the one which they had executed, other than the explanation as to how it should be received from the net balances; he said he understood it all right.

I can't tell you whether those words were "gross [231] output," were in there, when they were inserted. If I prepared it myself personally I have forgotten the details of it at the present time.

(Testimony of J. F. Hobbes.)

Q. Did you understand what was meant by the gross output?

A. I don't know that I used those particular words; I presume that I know what is meant by "gross output." I know that I told Mr. Lesamis about those words; that is when the difference between that deed that was drawn and the first deed was discussed; that was the understanding there between all of us, but I wanted there to be no misunderstanding whatever. I wanted to be sure that it was correctly understood; sure it was to be applied on the purchase price so that they could not claim to understand it differently, that the remainder was to be applied on the purchase price.

Q. Did you say anything about his share, his one-fourth interest in the property was to go to pay the twenty-four thousand dollars balance?

A. Yes, sir.

Q. Did you explain that to him?

A. Yes, sir, I had no occasion to misrepresent that or any part of it.

Redirect Examination.

I think there was another reason which I had for making that deed, which I desire to state: As I recollect, the original deed was not acknowledged; there was no notary public up there to take the acknowledgment and I think there [232] was some question that might come up whether they filed the deed; it was the intention to file the deed for record and they desired to have it acknowledged; I am not sure whether I understood that it was made in order that

(Testimony of J. F. Hobbes.)

it might be filed at the same time.

Recross-examination.

I will state that this deed was made out, made for Mr. Tyapay to sign. He signed up and his acknowledgment was taken and the deed recorded in the form on the back of the deed, and subsequently when Lesamis came into the office I drew up a certificate of acknowledgment and attached it to the deed, and drew up a third certificate, as I understood that Mr. Garbin was still in Kiana and that the deed would be taken to him and his signature and acknowledgment received there.

I did not know anything about the affidavit; I do not remember that now, but I presume it was prepared in proper form.

Testimony closed. [233]

That thereupon, and during the same term, the Court filed its opinion in said cause, and thereafter filed its Findings of Fact and Conclusions of Law as appears on file and of record in said court.

And said defendants on their part duly presented and filed their objections to said Findings of Fact and Conclusions of Law; and also filed and presented proposed Findings of Fact and Conclusions of Law; that said objections of defendants were overruled and defendants duly excepted, and the Court having refused to find as requested by defendants, the defendants also duly excepted. [234]

Now, within the time allowed by law, the defendants present this, their proposed Bill of Exceptions,

and pray that the same be settled and allowed by the Court.

Dated this the 17th day of June, 1914, at Nome, Alaska.

G. J. LOMEN,

O. D. COCHRAN,

Attorneys for Defendants.

[Order Settling and Allowing Bill of Exceptions.]

The above and foregoing Bill of Exceptions having been served, filed and presented for settlement within the time allowed by law, and being now found full, true and correct, containing all of the evidence introduced at the trial, the same is now settled and allowed by the Judge who succeeded the Honorable C. D. Murane, the Judge who tried said cause; the evidence in said case having been taken by one C. J. Nunne, a stenographer, and transcribed by her.

Done in open court this 25 day of July, 1914, at Nome, Alaska.

J. R. TUCKER,

District Judge.

Service of the foregoing bill of exceptions is hereby admitted at Nome, Alaska, this 17th day of June, 1914.

J. F. HOBBS,

Of Attorney for Plff. [235]

No. 2349. In the District Court for the District of Alaska, Second Division. H. Greenberg, Plaintiff, vs. Jack Lesamis et al., Defendants. Bill of Exceptions. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Jun. 17,

1914. John Sundback, Clerk. By ———, Deputy. G. J. Lomen and O. D. Cochran, Attorneys for Defendants. Refiled in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Jul. 25, 1914. G. A. Adams, Clerk. By J. A. B., Deputy. [236]

*In the District Court for the District of Alaska,
Second Division.*

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS, JOHN TYAPAY, ANDY GARBIN,
GEORGE STANLEY and SAM SALLO,

Defendants.

Notice [of Motion for Approval of Statement of Evidence, Waiver of Notice and Consent to Approval].

To the Above-named Plaintiff, H. Greenberg, and to William A. Gilmore, and J. F. Hobbes, His Attorneys.

YOU WILL PLEASE take notice that the defendants have lodged with the clerk of said court, and included in the bill of exceptions herein, a statement of the evidence essential to the decision of all questions presented by the appeal from the judgment herein, and that at the courtroom of said court in the courthouse in Nome, Alaska, on the 26th day of September, 1914, at ten o'clock A. M., the defendants above named, the appellants herein, will move the

said Court or the Judge thereof to approve said statement.

O. D. COCHRAN,
G. J. LOMEN,

Attorneys for Defendants.

Plaintiff hereby waives the above notice and consents to the approval of statement at any time.

WILLIAM A. GILMORE,
Of Attorneys for Plaintiff. [237]

[Endorsed]: No. 2349. In the District Court for the District of Alaska, Second Division. H. Greenberg, Plaintiff, vs. Jack Lesamis et al., Defendants. Notice. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Sep. 12, 1914. G. A. Adams, Clerk. By ———, Deputy. G. J. Lomen and O. D. Cochran, Attorneys for Defendants. [238]

[Order Approving Statement of Evidence.]

*In the District Court for the District of Alaska,
Second Division.*

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS JOHN TYAPAY, ANDY
GARBIN, GEORGE STANLEY, and SAM
SALLO,

Defendants.

All the evidence essential to the decision of the questions presented by the appeal from the judgment

herein is presented in the bill of exceptions approved and filed herein, and the statement of evidence contained in said bill of exceptions, having been found by me to be true, complete and properly prepared, said statement is hereby approved.

Done in open court this 12th day of September, 1914.

J. R. TUCKER,
District Judge.

[Endorsed]: No. 2349. In the District Court for the District of Alaska, Second Division. H. Greenberg, Plaintiff, vs. Jack Lesamis et al., Defendants. Approval of Statement of Evidence. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Sep. 12, 1914. G. A. Adams, Clerk. By ———, Deputy. G. J. Lomen and O. D. Cochran, Attorneys for Defendants. [239]

*In the District Court for the District of Alaska,
Second Division.*

No. 2349.

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS JOHN TYAPAY, ANDY
GARBIN, GEORGE STANLEY and SAM
SALLO,

Defendants.

Assignment of Errors.

Come now the defendants above named, and assign

the following errors upon which they will rely in prosecuting their appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the final judgment of said District Court made and entered on the 28th day of October, 1913; from the order of said Court denying defendants' motion to quash the execution issued on said judgment or to continue the sale under said execution, dated July 18th, 1914; and from the order confirming the sale on execution, dated September 5th, 1914.

I.

The Court erred in its first finding of fact in that the Court found that the sum of twenty-four thousand (\$24,000) dollars, the balance agreed to be paid by plaintiff for the undivided one-quarter interest mentioned, was to be paid from the net profits of the mining operations thereafter to be conducted upon the mining claims mentioned.

II.

The Court erred in its second finding of fact wherein it found that the defendants thereupon, and in pursuance of the terms of any written instrument, entered into the partnership [240] known as Klery Creek Mining Company and thereupon began mining operations upon the placer claims referred to.

III.

The Court erred in its third finding of fact wherein it found as follows:

“And the Court further finds that all of said mining claims were put into said mining copartnership as assets by said defendants, and thereupon the said Klery Creek Mining Company entered into posses-

sion of said claims and began to mine and operate the same as a mining copartnership.”

And further erred wherein it found, in said third finding of fact:

“That thereafter the said Klery Creek Mining Company operated said mining claims on said Klery Creek and vicinity, in the Noatak-Kobuk Recording District, between the said 19th day of March, 1910, and the first day of September, 1911.”

IV.

The Court erred in finding in its fourth finding of fact: “That on or about the first day of September, 1911, the said Klery Creek Mining Company executed several written leases upon several of the said mining claims above mentioned belonging to the said Klery Creek Mining Company.” And in further finding therein that “Certain stipulated royalties were reserved to be paid to the said mining copartnership.”

V.

The Court erred in finding that “The defendants Andy Garbin and Jack Lesamis, in violation of the terms and conditions of their copartnership, conveyed, without consideration to the said defendants George L. Stanley and Sam Sallo, all of their right, title and interest in the said Klery Creek Mining Company copartnership property.” [241]

VI.

The Court erred in finding that the royalties due or collected from the placer claims above mentioned under said leases, belonged to the Klery Creek Mining Company.

VII.

The Court erred in finding that there was any indebtedness of the Klery Creek Mining Company to Philip Murphy, assignee of Robinson-Magids & Company, and in finding that the same should be paid from the first proceeds of the assets and property of the said Klery Creek Mining Company.

VIII.

The Court erred in finding that the defendants are all insolvent.

IX.

The Court erred in finding that it was the intent and meaning of the parties in forming said copartnership that the said balance of \$24,000.00 was to be paid from the net profits from the mining operations of the copartnership property, and, having found such balance, the Court erred in not apportioning the same.

X.

The Court erred in finding that the allegations contained in the answers of the defendants, to wit, "That said balance payment was due from the first gold-dust extracted and taken from the undivided one-quarter interest in said mining property" are not supported by the evidence, and are untrue.

XI.

The Court erred in finding as conclusions of law, "That the mining claims mentioned in the complaint are liable for the debts of [242] the copartnership mentioned."

XII.

And in finding "That the balance of the purchase

price agreed to be paid by the plaintiff Greenberg should be paid from the profits of the copartnership property.”

XIII.

The Court erred in refusing to find as requested by defendants, that the plaintiff H. Greenberg is indebted to the defendants Stanley and Sallo in the sum of \$1200.00 on account of assessment work; and, if not, then that \$2400.00 are due said defendants, on such account, from the Klery Creek Mining Company.

XIV.

The Court erred in refusing to find that the mining copartnership known as the Klery Creek Mining Company was a partnership organized without any definite term,—was a partnership at will, and that the same was dissolved upon notice September 9th, 1910.

XV.

The Court erred in refusing to find that the balance of the twenty-four thousand (\$24,000.00) Dollars purchase money to be paid by H. Greenberg, plaintiff, is now due and owing from said plaintiff Greenberg to the defendants, and that said defendants have a lien upon the interest of Greenberg in said mining claims for the payment thereof.

XVI.

The Court erred in refusing to find as a conclusion of law that the defendants, on a sale of the partnership assets, could become bidders and, as against plaintiff, be credited with the amount due from plaintiff to them. [243]

XVII.

The Court erred in refusing to find as a conclusion of law that the amount realized on a sale of the premises, less the costs of this action and the expenses of sale, should remain in the custody of the Court until the final determination of any action or actions pending on behalf of any of the creditors of the Klery Creek Mining Company and until the further order of the Court.

XVIII.

The Court erred in refusing to find as a conclusion of law that defendants were entitled to a judgment against plaintiff for the amount found due as the balance of the unpaid purchase money agreed to be paid for the undivided one-quarter of the premises described in the complaint.

XIX.

The Court erred in refusing to find as a conclusion of law that defendants Stanley and Sallo have judgment against plaintiff for \$1200.00 on account of assessment work performed by them.

XXI.

The Court erred in entering its judgment herein; and said judgment was erroneous in this: that,

First: It was final in character, but entered before all partnership matters were disposed of, and without disposing of same.

- a. No opportunity was afforded creditors to present their claims.
- b. No provision was made for the collection of claims due the firm.
- c. No disposition of the attachment of the creditor

Murphy was made, and same was ignored.

- d. The claim of \$2400.00 of Stanley and Sallo, allowed in the [244] findings, was wholly forgotten. So also credit of Frank Lesamis as per testimony of Greenberg, \$1158.00.
- e. The claims of the partners *inter sese*, after exhausting partnership assets, were left undetermined.
- f. No apportionment was made of the balance of the twenty-four thousand dollars due defendants.
- g. No partner, master or receiver was appointed to take over the properties and wind up the partnership.
- h. The findings were made to operate as an interlocutory judgment of dissolution and partial accounting.

Second: It gives a preference to one creditor over another.

Third: It adjudicates a contested claim of an attaching creditor while the action thereon is still pending.

Fourth: It awards judgment and execution in favor of such creditor who is not a party to this action.

Fifth: It confers upon the clerk of said court judicial power to determine who the distributees of the proceeds of sale shall be, the "assigns" being undetermined.

Sixth: It is indefinite in the matter of the beneficiaries thereunder who are named in the disjunctive and not by name.

Seventh: It is indefinite as to whether the sale is to be subject to, or free from, the attachment lien.

Eighth: It assumes jurisdiction of property without taking it into custody.

Ninth: It is incomplete in that it does not adjudicate the rights of the partners as between themselves; and in failing to give judgment in favor of creditor partners.

Tenth: It is inconsistent in that it provides for payment of costs from proceeds of sale of partnership property and also awards judgment for costs against defendants personally. [245]

Eleventh: It is not justified by the findings of fact and conclusions of law.

Twelfth: It is based upon erroneous finding of fact and conclusions of law, as heretofore specified with reference to such findings and conclusions.

XXII.

The Court erred in denying defendants' motion to quash the Execution issued herein.

XXIII.

The Court erred in denying defendant's motion to continue on terms, the sale on execution herein, until the determination of the appeal from the judgment herein.

XXIV.

The Court erred in confirming the sale on Execution herein.

O. D. COCHRAN,

G. J. LOMEN,

Attorneys for Defendant.

[Endorsed]: No. 2349. In the District Court for the District of Alaska, Second Division. H. Greenberg, Plaintiff, vs. Jack Lesamis et al., Defendants. Assignment of Errors. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Sep. 12, 1914. G. A. Adams, Clerk. By ———, Deputy. G. J. Lomen and O. D. Cochran, Attorneys for Defendants. [246]

*In the District Court for the District of Alaska,
Second Division.*

No. 2349.

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS, JOHN TYAPAY, ANDY
GARBIN, GEORGE STANLEY and SAM
SALLO,

Defendants.

Petition for an Order Allowing Appeal.

Come now the defendants above named, and feeling themselves aggrieved by the final judgment and decree made and entered in the above-entitled cause on the 28th day of October, 1913, in favor of the plaintiff and against the defendants, for a dissolution of partnership and an accounting, do hereby appeal from said final judgment and decree and from the whole and every part thereof, and do also appeal from the order of said Court dated July 18th, 1914, refusing to quash the Execution or to continue the sale thereunder; and from the order of said Court dated Sep-

tember 5th, 1914, confirming the sale on execution, to the United States Circuit Court of Appeals for the Ninth Circuit, and they pray that these their appeals may be allowed and that a transcript of the record and proceedings upon which said judgment and orders were made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and that said Court approve the bond on appeal herein in the penal sum of [247] two hundred and fifty (\$250.00) dollars.

Dated at Nome, Alaska, this 12th day of September, 1914.

O. D. COCHRAN,
G. J. LOMEN,
Attys. for Defts.

[Endorsed]: No. 2349. In the District Court for the District of Alaska, Second Division. H. Greenberg, Plaintiff, vs. Jack Lesamis et al., Defendants. Petition for an Order Allowing Appeal. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Sep. 12, 1914. G. A. Adams, Clerk. By ———, Deputy. G. J. Lomen and O. D. Cochran, Attorneys for Defendants.
[248]

*In the District Court for the District of Alaska,
Second Division.*

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS, JOHN TYAPAY, ANDY
GARBIN, GEORGE STANLEY and SAM
SALLO,

Defendants.

Undertaking on Appeal.

KNOW ALL MEN BY THESE PRESENTS, that we, Jack Lesamis, John Tyapay, Andy Garbin, George Stanley and Sam Sallo, as principals, and J. A. Bachelder and Ralph Lomen, as sureties, are held and firmly bound unto the plaintiff H. Greenberg, in the sum of Two Hundred and Fifty (\$250.00) Dollars to be paid to the said plaintiff, his heirs or assigns, to the payment of which well and truly to be made, we bind ourselves and each of us jointly and severally, and our and each of our heirs, executors and administrators, firmly by these presents.

Sealed with our seals and dated this 12th day of September, 1914.

The condition of the above undertaking and obligation is such that, WHEREAS, the above-named defendants have filed their petition for appeals from the final judgment made and entered herein on the 28th day of October, 1913, and from the order refusing to quash the execution herein or continue the sale thereunder, dated July 18th, 1914; from the

order confirming such sale, dated September 5th, 1914, and have taken [249] an appeal from said judgment and orders to the United States Circuit Court of Appeals for the Ninth Circuit, and from the whole of said judgment and orders, to reverse the same:

NOW, THEREFORE, if the above-named defendants Jack Lesamis, John Tyapay, Andy Garbin, George Stanley and Sam Sallo shall prosecute their said appeals to effect, and answer all costs if they fail to make good their said appeals, then this obligation shall be void; otherwise to remain in full force and effect.

JACK LESAMIS,
JOHN TYAPAY,
ANDY GARBIN,
GEORGE STANLEY,
SAM SALLO,

Principals.

By G. J. LOMEN and
O. D. COCHRAN,

Their Attorneys.

J. A. BACHELDER,
RALPH LOMEN,

Sureties. [250]

Territory of Alaska,
Cape Nome Precinct,—ss.

J. A. Bachelder and Ralph Lomen, being first duly sworn, each for himself deposes and says:

I am one of the sureties named in the above undertaking, and a resident of the District of Alaska; that I am not an attorney at law, marshal, deputy marshal,

clerk of any court, or other officer of any court, and am worth the sum of Two Hundred and Fifty Dollars over and above all just debts and liabilities, and exclusive of property exempt from execution.

J. A. BACHELDER.

RALPH LOMEN.

Subscribed and sworn to before me this the 12th day of September, 1914.

[Notarial Seal]

G. J. LOMEN,

Notary Public in and for the District of Alaska.

My commission expires on the 27th day of June, 1917.

Order.

The above and foregoing bond is hereby approved this 12th day of September, 1914.

J. R. TUCKER,

District Judge. [251]

[Endorsed]: No. 2349. In the District Court for the District of Alaska, Second Division. H. Greenberg, Plaintiff, vs. Jack Lesamis et als., Defendants. Undertaking on Appeal. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Sep. 12, 1914. G. A. Adams, Clerk. By ———, Deputy. G. J. Lomen and O. D. Cochran, Attorneys for Defendants. Civil Bond Record, Vol. #5, page 369. C. [252]

*In the District Court for the District of Alaska,
Second Division.*

No. 2349.

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS, JOHN TYAPAY, ANDY
GARBIN, GEORGE STANLEY and SAM
SALLO,

Defendants.

Order Allowing Appeal.

Upon motion of O. D. Cochran and G. J. Lomen,
attorneys for defendants above named, it is

ORDERED, that the appeals to the United States
Circuit Court of Appeals for the Ninth Circuit, from
the final judgment and decree heretofore made and
entered upon the 28th day of October, 1913; from the
order denying defendants' motion to quash the execu-
tion or continue the sale thereunder, dated July 18th,
1914; and from the order confirming the sale on exe-
cution herein dated September 5th, 1914, are hereby
allowed.

Done in open court this the 12th day of September,
1914.

J. R. TUCKER,

District Judge. [253]

[Endorsed]: No. 2349. In the District Court for
the District of Alaska, Second Division. H. Green-
berg, Plaintiff, vs. Jack Lesamis et als., Defendants.
Order Allowing Appeal. Filed in the Office of the

Clerk of the District Court of Alaska, Second Division, at Nome. Sep. 12, 1914. G. A. Adams, Clerk. By ———, Deputy. G. J. Lomen and O. D. Cochran, Attorneys for Defendants. [254]

*In the District Court for the District of Alaska,
Second Division.*

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS, JOHN TYAPAY, ANDY
GARBIN, GEORGE STANLEY and SAM
SALO,

Defendants.

**Certificate [of Clerk U. S. District Court as to
Execution, etc.]**

I, the undersigned, G. A. Adams, do hereby certify that I am the clerk of the above-entitled court; that an execution in the above-entitled action was returned and filed in my office on the 11th day of August, 1914; that no money was then nor has any money since been turned over to me as the proceeds of any sale on execution in said action, except proceeds of the sale of personal property, amounting to the sum of seventeen and 13/100 (\$17.13) dollars.

IN WITNESS WHEREOF I have hereunto set my hand and official seal this 5th day of October, 1914.

[Court Seal]

G. A. ADAMS,

Clerk, District Court for the District of Alaska, Second Division.

[Endorsed]: No. 2349. In the District Court for the District of Alaska, Second Division. H. Greenberg, Plaintiff, vs. Jack Lesamis et al., Defendants. Certificate. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Oct. 5, 1914. G. A. Adams, Clerk. By _____, Deputy. G. J. Lomen and O. D. Cochran, Attorneys for Defendants, Nome, Alaska. [255]

*In the District Court for the District of Alaska,
Second Division.*

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS, JOHN TYAPAY, ANDY
GARBIN, GEORGE STANLEY and SAM
SALLO,

Defendants.

Praeipie [for Transcript of the Record].

To the Above-named Plaintiff, H. Greenberg, and to J. F. Hobbes and William A. Gilmore, His Attorneys, and to the Clerk of Said Court:

You will please take notice that the portions of the record to be incorporated into the transcript on the appeals herein, are the following, to wit:

The summons, complaint, answers, replies thereto, the supplemental answer and cross-complaint and reply thereto, opinion, findings of fact and conclusions of law of the Court, objections to findings and conclusions, defendants' proposed amendments to findings

and conclusions, orders thereon and exceptions thereto, the judgment and exceptions and objections thereto, the execution and return thereon, the motion to quash execution or continue the sale thereunder, the order thereon, the motion to confirm the sale on execution and the objections to the confirmation of such sale, and the order of confirmation and exception thereto, the Bill of Exceptions containing [256] a statement of the evidence and the approval of the Court, the assignment of errors, the petition, order, bond and citation on the appeals herein. The order extending time to file transcript and citation, of which lodged copies have been filed, will go out with said transcript to the United States Circuit Court of Appeals for the Ninth Circuit.

O. D. COCHRAN,

G. J. LOMEN,

Attorneys for Defendants.

[Endorsed]: No. 2349. In the District Court for the District of Alaska, Second Division. H. Greenberg, Plaintiff, vs. Jack Lesamis et al., Defendants. Praecipe. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Sep. 12, 1914. G. A. Adams, Clerk. By ———, Deputy. G. J. Lomen and O. D. Cochran, Attorneys for Defendants. [257]

[Certificate of Clerk U. S. District Court to
Transcript of Record.]

*In the District Court for the District of Alaska,
Second Division.*

No. 2349.

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS, JOHN TYAPAY, ANDY
GARBIN, GEORGE STANLEY and SAM
SALO,

Defendants.

I, G. A. Adams, Clerk of the District Court of Alaska, Second Division, do hereby certify that the foregoing typewritten pages, from 1 to 257, both inclusive, are a true and exact transcript of the Complaint, Summons, Answer of Stanley and Sallo, Answer of Garbin, Tyapay and Lesamis, Reply to Separate Answer of Jack Lesamis, John Tyapay and Andy Garbin, Reply to Separate Answer of George Stanley and Sam Sallo, Supplemental Answer and Cross-complaint, Reply and Answer to Supplemental Answer and Cross-complaint of Defendants George Stanley and Sam Sallo, Memo. Opinion, Findings of Fact and Conclusions of Law, Defendants' Exceptions to Findings, etc., Decree, Defendants' Objections and Exceptions to Judgment, Execution and Marshal's Return thereon, Motion, Affidavit and Stipulation *in re* quashing execution, Opinion, Motion for Confirmation of Sale, Objections to Confirmation

of Sale, Order Confirming Sale, Court Minutes of November 1, 1913 (Overruling Motion for New Trial, etc.), Court Minutes of February 14, 1914 (Overruling Second Motion for New Trial, etc.), Opinion Overruling Motion for New Trial, etc., Bill of Exceptions, Order Settling and Allowing [258] Bill of Exceptions, Notice *in re* Statement of Evidence, Approval of Statement of Evidence, Assignment of Errors, Petition for an Order Allowing Appeal, Undertaking on Appeal, Order Allowing Appeal, Certificate of Clerk *in re* money Returned on Execution, and Praecipe for Transcript on Appeal, in the case of H. Greenberg, Plaintiff, vs. Jack Lesamis, et al., Defendants, No. 2349—Civil, this Court, and of the whole thereof, as appears from the records and files in my office at Nome, Alaska; and further certify the original Order Enlarging Time to File Transcript on Appeal and the original Citation in the above-entitled cause are attached to this transcript.

Cost of transcript \$68.40, paid by G. J. Lomen, of Attorneys for Defendants.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court this 24th day of October, A. D. 1914.

G. A. ADAMS,
Clerk. [259]

*In the District Court for the District of Alaska,
Second Division.*

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS, JOHN TYAPAY, ANDY
GARBIN, GEORGE STANLEY, and SAM
SALLO,

Defendants.

Order Enlarging Time to File Record.

On motion of O. D. Cochran and G. J. Lomen, attorneys for defendants, and good cause appearing to the Court therefor, it is now hereby

ORDERED that the time for filing and docketing the transcript and record on the appeals in the above-entitled cause in the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, is hereby extended to the 15th day of November, 1914.

Done in open court this the 12th day of September, 1914.

J. R. TUCKER,

District Judge. [260]

[Endorsed]: No. 2349. In the District Court for the District of Alaska, Second Division. H. Greenberg, Plaintiff, vs. Jack Lesamis, et al., Defendants. Order Enlarging Time to File Record. [261]

*In the District Court for the District of Alaska,
Second Division.*

H. GREENBERG,

Plaintiff,

vs.

JACK LESAMIS, JOHN TYAPAY, ANDY
GARBIN, GEORGE STANLEY, and SAM
SALLO,

Defendants.

Citation.

District of Alaska,

Cape Nome Precinct,—ss.

The President of the United States of America, to H.
Greenberg, Plaintiff, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit to be held at the City of San Francisco, in the State of California, within thirty days from the date of this citation, to wit, on the 12th day of October, 1914, pursuant to an order allowing the appeals herein entered in the office of the Clerk of the United States District Court for the District of Alaska, Second Division, from the final judgment made and entered herein on the 28th day of October, 1913, from the order denying defendants' motion to quash the execution herein or continue the sale thereunder, dated July 18th, 1914, and from the order confirming the sale on execution, dated September 5th, 1914; in that certain action wherein you, the said H. Greenberg, are plaintiff, and Jack Lesamis, John

Tyapay, Andy Garbin, [262] George Stanley and Sam Sallo are defendants, to show cause, if any there be, why the said final judgment and orders rendered against said defendants should not each and all be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States of America, this 12th day of September, 1914, and of the Independence of the United States the one hundred and thirty-eighth.

J. R. TUCKER,
District Judge.

Attest my hand and seal of the United States District Court for the District of Alaska, Second Division, at the Clerk's office at Nome, Alaska, this 12th day of September, 1914.

[Seal] G. A. ADAMS,
Clerk of the District Court for the District of Alaska,
Second Division.

Service of the foregoing citation is hereby admitted this 12th day of Sept. 1914.

J. F. HOBBS,
Of Attys. for Plaintiff. [263]

[Endorsed]: No. 2349. In the District Court for the District of Alaska, Second Division. H. Greenberg, Plaintiff, vs. Jack Lesamis et al., Defendants. Citation. [264]

[Endorsed]: No. 2514. United States Circuit Court of Appeals for the Ninth Circuit. Jack Lesamis, John Tyapay, Andy Garbin, George Stanley and Sam Sallo, Appellants, vs. H. Greenberg, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the District of Alaska, Second Division.

Received and filed November 10, 1914.

FRANK D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.